Calendar No. 589

84TH CONGRESS, 1st Session } SENATE { REPORT No. 584

CERTAIN CASES IN WHICH THE ATTORNEY GENERAL HAS SUSPENDED DEPORTATION PURSUANT TO SECTION 244 (a) (5) OF THE IMMIGRATION AND NATIONALITY ACT

JUNE 21 (legislative day, JUNE 20), 1955.—Ordered to be printed

Mr. KILGORE, from the Committee on the Judiciary, submitted the following

REPORT

[To accompany S. Con. Res. 42]

The Committee on the Judiciary, to which were referred certain cases in which the Attorney General has suspended deportation, having considered the same, reports favorably on certain of said cases and recommends that Senate Concurrent Resolution 42 with reference to certain of said cases be agreed to.

PURPOSE OF THE CONCURRENT RESOLUTION

The purpose of the concurrent resolution is to record congressional approval in accordance with Public Law 414 of the 82d Congress of suspension of deportation in certain cases in which the Attorney General had suspended deportation pursuant to section 244 (a) (5) of the Immigration and Nationality Act.

STATEMENT OF FACTS

This resolution includes certain cases in which the Attorney General has exercised the discretionary authority granted to him under the Immigration and Nationality Act to suspend the deportation of certain aliens deportable as former subversives, criminals, immoral persons, violators of the narcotic laws or violators of the alien registration laws. The cases have been referred to the Congress by the Attorney General under the procedure prescribed in the act which requires affirmative approval by both the Senate and House of Representatives in this type of case before the act of the Attorney General in suspending deportation may become final and the immigration status of the alien adjusted to that of an alien lawfully admitted for permanent residence. In a majority of the cases the aliens were originally lawfully admitted

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to the United States, they have long periods of residence, and they have close family ties in this country. In each case which is recommended for approval, a careful check has been made to determine whether or not the alien has met the requirements of the law, is of good moral character, and his case presents strong equities which would warrant the grant of suspension of deportation. In each case, it has been administratively found that the alien has effected a genuine reformation.

Under the provisions of section 244 (a) (5) of the Immigration and Nationality Act, the Attorney General is granted the discretionary authority, upon application by the alien, to adjust the status of certain aliens who have committed acts making them deportable as subversives, criminals, immoral persons, violators of the narcotic laws, or violators of the alien registration laws, through a suspension of deportation procedure. This form of discretionary relief is available to the deportable alien within those categories upon a showing (1) of 10 years' continuous physical presence in the United States following the commission of an act or the assumption of a status constituting a ground for deportation; (2) that he has not been served with a final order of deportation up to the time of his application for suspension; (3) that he has been a person of good moral character during the required period of physical presence; and (4) that his deportation would result in exceptional and extremely unusual hardship to himself or to his spouse, parent or child, who is a citizen or an alien lawfully admitted for permanent residence.

Prior to December 24, 1952, the effective date of the Immigration and Nationality Act and since 1940, there has been in effect a suspension of deportation procedure under which the Attorney General has had discretionary authority to adjust administratively the status of certain deportable aliens under conditions specified in the law. However, under the procedure as it existed prior to December 24, 1952, the Attorney General was specifically denied the authority to grant suspension of deportation to aliens deportable as former subversives, criminals, immoral persons, and physical and mental defectives under the provisions of section 19 (d) of the Immigration Act of 1917. While the absolute bar to suspending the deportation of aliens in such categories has been removed, section 244 (a) (5) of the Immigration and Nationality Act sets forth precise standards for determination of whether or not the individual cases merit the administrative relief made available to the deportable alien. Under the procedure prescribed, the Attorney General is required to report each case in which he suspends deportation under section 244 (a) (5) of the act to the Congress, and affirmative congressional approval is required in each case before the suspension of deportation becomes final and the status of the alien can be adjusted to that of a permanent resident.

Included in the concurrent resolution are 171 cases. These 171 cases are among 179 cases referred to the Congress during the 2d session of the 83d Congress and in January 1955. Of the cases referred during this period, 2 cases were withdrawn by the Attorney General, 4 cases were disapproved, and 2 cases have been held for further study and investigation.

The committee, after consideration of all the facts in each case referred to in the concurrent resolution, finds that the concurrent resolution should be enacted and it accordingly so recommends its enactment.

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Calendar No. 594

84TH CONGRESS, 1st Session | SENATE | REPORT No. 589

COMMON BOUNDARY BETWEEN MARYLAND AND DELAWARE

JUNE 21 (legislative day, JUNE 20), 1955.—Ordered to be printed

Mr. KILGORE, from the Committee on the Judiciary, submitted the following

REPORT

[To accompany S. 987]

The Committee on the Judiciary, to which was referred the bill (S. 987) to authorize the Secretary of Commerce, acting through the Coast and Geodetic Survey, to assist the States of Maryland and Delaware to reestablish their common boundary, having considered the same, reports favorably thereon, without amendment, and recommends that the bill do pass.

PURPOSE

The purpose of this proposed legislation is to authorize the Secretary of Commerce, acting through the Coast and Geodetic Survey, upon the joint request of (1) the Board of Natural Resources of the State of Maryland, and (2) the State archivist and the chief engineer of the highway department of the State of Delaware, to resurvey the common boundary between the States of Maryland and Delaware with a view to assisting such States to re-mark or otherwise delineate such boundary.

STATEMENT

S. 987 is identical to S. 3033 of the 83d Congress which was reported favorably by the Committee on the Judiciary on August 5, 1954, and passed the Senate on August 11, 1954, but on which no action was taken by the House. All of the facts and information are contained in Senate Report No. 2235 on S. 3033 of the 83d Congress which is hereinafter set forth in full.

Information received by the committee from Senator Butler of Maryland indicates the following to be the facts relative to this legislation:

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The historical character of the Maryland-Pennsylvania and Maryland-Delaware boundaries is well known to students of history. The markers installed by Mason and Dixon on the Maryland-Pennsylvania boundary were repaired and reset in 1902, and this boundary is still in good condition. The Maryland-Delaware boundaries are equally historic, but the markers on these 2 lines have been neglected for 2 centuries. Many of these markers are in bad condition; several have been moved from their correct position and a few have been lost.

In 1951 the Maryland General Assembly passed an act (ch. 614) authorizing the board of natural resources to cooperate with the proper officials of Delaware in the preservation of the historic boundaries between the two States. In the same year the State of Delaware passed a complementary act (ch. 256), so the two States are now in a position to proceed jointly in the restoration of their boundaries.

Since the Maryland-Delaware boundaries are obscure at certain points, it now seems advisable to resurvey both boundaries to confirm the position of existing markers and to determine the correct position of those which have been displaced or lost. There is no territorial dispute between the two States and a resurvey is proposed merely to reestablish the original boundaries laid down during the colonial period. The resurvey should be done by a neutral agency and with the greatest possible accuracy. The most competent surveying organization known is the United States Coast and Geodetic Survey. Accordingly, the board of natural resources and corresponding officials of Delaware have requested a bill in the 83d Congress directing the United States Coast and Geodetic Survey to reestablish the Maryland-Delaware boundaries laid out by colonial surveyors in 1751 and by Mason and Dixon during the years 1763–67. After such a resurvey the two States would then proceed to repair and reset existing markers and replace those which have been lost.

The Maryland Historical Society and the Society for the Preservation of Maryland Antiquities have followed the boundary negotiations with Delaware, and both organizations have expressed a strong desire to assist the project in any manner possible. Finally, 7 of the 9 Eastern Shore counties of Maryland lie adjacent to Delaware and a number of citizens on either side of the 2 boundaries have expressed concern over the neglect of colonial boundary markers which have been landmarks for 2 centuries.

The report from the Secretary of Commerce, which is hereto attached, indicates that, under applicable law, the Federal Government may join in the survey, provided that the costs are borne by the States involved. However, inasmuch as this particular boundary work has significant historical importance to the United States Government as well as to the States of Maryland and Delaware, the committee is of the opinion that the legislation is meritorious and recommend S. 3033 to the favorable consideration of the Senate.

The committee adheres to its recommendation made on S. 3033 in in the 83d Congress, and therefore recommends that the bill, S. 987, be considered favorably.

Attached hereto and made a part thereof is the report of the Secretary of Commerce dated June 9, 1954, on S. 3033, 83d Congress, and notes on the Maryland-Delaware boundaries submitted by Senator Butler of Maryland.

THE SECRETARY OF COMMERCE,
Washington, June 9, 1954.

Hon. WILLIAM LANGER,
Chairman, Committee on the Judiciary,
United States Senate, Washington, D. C.

DEAR MR. CHAIRMAN: This letter is in reply to your request dated March 3, 1954, for the views of this Department with respect to S. 3033, a bill to authorize the Secretary of Commerce, acting through the Coast and Geodetic Survey, to assist the States of Maryland and Delaware to reestablish their common boundary.

The survey which would be authorized by S. 3033 would involve the reestablishment of some 100 points along the boundary between Delaware and Maryland at a cost of approximately $68,000.

This Department recommends against the enactment of S. 3033.

We believe that the proposed survey is a matter of primary concern to the two States involved. Since that general area is very well surveyed and mapped the additional points needed to establish the boundary more precisely would contribute very little to the Federal mapping program. For these reasons it would not appear that the Federal Government should bear the cost of this survey.

If it is contemplated that the Coast and Geodetic Survey would be reimbursed by the States for the cost of conducting the survey proposed by the legislation, there is presently adequate authority for such an arrangement. Section 5 of the act of August 6, 1947 (61 Stat. 788, 33 U. S. C. 883e) authorizes the Department "* * * to enter into cooperative agreements with, and to receive and expend funds made available by, any State * * * for surveys * * *". Under this authority the Department will perform a survey of the boundary if funds are provided by the States for accomplishing the work. We would be willing to absorb the cost of the office computations on this project to compensate for the minor interest of the Federal Government in such a survey.

As stated above, the cost to the States of the survey is estimated at approximately $68,000. It would cost some $3,000 to make a detailed reconnaissance of the work which would enable a more precise estimate of the cost of the survey. The Department would also be willing to perform this reconnaissance on a reimbursable basis under the present authority.

Therefore the bill would be unnecessary if the States desire to have the work undertaken at their expense.

We have been advised by the Bureau of the Budget that they would interpose no objection to the submission of this report to your committee.

If we can be of further assistance in this matter, please call on us.

Sincerely yours,

SINCLAIR WEEKS,
Secretary of Commerce.

NOTES ON THE MARYLAND-DELAWARE BOUNDARIES

HISTORICAL FACTS

1. The boundary disputes between William Penn and Lord Baltimore began in 1685 when the province of Pennsylvania included the present State of Delaware. Litigation, border feuds, and tax disputes continued for nearly a century.

2. The present east-west line between Maryland and Delaware, which was still a part of Pennsylvania, was established by colonial surveyors in 1751. This line was marked at 5-mile intervals with 7 stone monuments engraved on 1 side with the coat of arms of William Penn and on the other side with the coat of arms of Lord Baltimore.

3. The Maryland-Pennsylvania boundary and the north-south line between Maryland and Delaware (which was still a part of Pennsylvania) were laid out and marked during the years 1763–67 by two British surveyors, Charles Mason and Jeremiah Dixon.

4. The two lines surveyed by Mason and Dixon were marked by stone monuments which were quarried and dressed in England and shipped to the Chesapeake Bay and its various tributaries by sailboat. These monuments were set at 1-mile intervals on both boundaries. Every fifth stone was engraved on 1 side with the coat of arms of Lord Baltimore and on the opposite side with the coat of arms of William Penn. Between each successive pair of crown stones were 4 milestones, each engraved with the letter "M" facing the Maryland Province and the letter "P" facing the Pennsylvania Province.

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5. Mason and Dixon continued the northern boundary of Maryland several miles beyond the limits of the Province. They were stopped by the Indians at Dunkard Creek, a small tributary of the Monongahela River.

PRESENT CONDITION OF THE BOUNDARIES

1. During the years 1901–3 the United States Coast and Geodetic Survey reestablished the Maryland-Pennsylvania boundary, the Mason and Dixon markers were repaired and reset, and this boundary is still in good condition 50 years later.

2. The 2 boundaries between Maryland and the present State of Delaware have been neglected for 2 centuries. No steps have been taken to restore or preserve the markers of these historic boundaries. Many markers have been broken or otherwise damaged, a few have been removed from their correct position, and others have been lost completely.

HISTORICAL SIGNIFICANCE OF THE MARYLAND-DELAWARE BOUNDARIES

1. The present east-west line between Maryland and Delaware was established and marked by obscure colonial surveyors in 1751. They operated without highways and contended with swamps, underbrush, and insect pests, yet they established with great accuracy a line still marked by stones planted in 1751. The present north-south line between Maryland and Delaware was established and marked by two modest, unassuming mathematicians and astronomers, Charles Mason and Jeremiah Dixon.

2. The Maryland-Pennsylvania and the Maryland-Delaware boundaries are the most famous boundaries in the Western Hemisphere. The names of Mason and Dixon are as closely associated in the mind of every schoolboy as ham and eggs or ice cream and cake.

3. The surveys which determined these boundaries were not merely land surveys; they included detailed astronomical observations which permitted accurate maps of the entire Northeastern United States. These surveys were thus the beginning of scientific geography in North America.

4. With the development of modern highways and the automobile, the historic boundaries between Maryland and Delaware have become more accessible to the general public each year. These boundaries should be reestablished with the greatest possible care and their historic markers should be repaired and restored.

5. The historic boundary markers installed by colonial surveyors in 1751 and by Mason and Dixon in 1763–67 are as much a part of the national heritage as the site of the Jamestown settlement or Independence Hall. They are more significant to American tradition than the home and tailor shop of Andrew Johnson, the Saratoga battlefield, and numerous other historic points on which the Federal Government spends annually thousands of dollars.

OBLIGATIONS FOR THE PRESERVATION OF THE MARYLAND-DELAWARE BOUNDARY

1. Maryland and Delaware have no territorial disputes. The two States are eager to reestablish with the greatest possible fidelity their common historic boundaries which were first surveyed during the colonial period. These boundaries should be reestablished by the United States Coast and Geodetic Survey, which is not only a neutral party but also the most competent surveying organization in the world. The resurvey of these boundaries would be a nonrecurring expense. When these boundaries are reestablished the States of Maryland and Delaware are prepared jointly to repair and restore the historic markers which were installed during the colonial period.

2. The Federal Government shares with the States of Maryland and Delaware an obligation to reestablish the Maryland-Delaware boundaries and to restore the markers which are a part of the scientific tradition of the Nation.

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Calendar No. 595

84TH CONGRESS, 1st Session | SENATE | REPORT No. 590

TERMS OF SUBVERSIVE ACTIVITIES CONTROL BOARD MEMBERS

JUNE 21 (legislative day, JUNE 20), 1955.—Ordered to be printed

Mr. KILGORE, from the Committee on the Judiciary, submitted the following

REPORT

[To accompany S. 2171]

The Committee on the Judiciary, to which was referred the bill (S. 2171) to amend the Subversive Activities Control Act so as to provide that upon the expiration of his term of office a member of the Board shall continue to serve until his successor shall have been appointed and shall have qualified, having considered the same, reports favorably thereon, without amendment, and recommends that the bill do pass.

This bill would add a simple amendment to the Subversive Activities Control Act so as to bring the provisions of the act respecting the tenure of the members of the Subversive Activities Control Board in line with common practice by permitting a Board member to continue to serve, upon the expiration of his term, until his successor shall have been appointed and shall have qualified.

The basic need for this amendment lies in the fact that members of the Subversive Activities Control Board often sit individually to conduct hearings. It then becomes their duty to prepare proposed reports covering the hearings over which they presided. But without the amendment contained in S. 2171, a member whose term expires while he is in the middle of a hearing, or so soon after a hearing that he has not had time to complete his proposed report, must nevertheless stop performing any and all official functions.

It is, of course, important that a proposed report should be prepared by the Board member who heard the case, since only he is in a position to judge the credibility of witnesses who appeared before him.

Since it is impossible to tell in advance exactly how long a hearing will take, it may not be possible in all cases to avoid a situation in which a member's term expires after he has begun presiding at a

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hearing and before he has completed his proposed report thereon. However, to take ordinary precautions in this direction would appear to require that no Board member undertake the duties of presiding officer in any case within several months of the date of expiration of his term. This is, of course, a wholly undesirable alternative to the enactment of S. 2171.

This bill has been strongly supported by both the Department of Justice and the Subversive Activities Control Board. Full text of letters from the Deputy Attorney General and the Chairman of the Board are appended as a part of this report.

JUNE 13, 1955.

Hon. HARLEY M. KILGORE,
Chairman, Committee on the Judiciary,
United States Senate, Washington, D. C.

DEAR SENATOR: This will refer to the bill (S. 2171) to amend the Subversive Activities Control Act so as to provide that upon the expiration of his term of office a member of the Board shall continue to serve until his successor shall have been appointed and shall have qualified.

The Subversive Activities Control Board was established by section 12 of the Subversive Activities Control Act of 1950 (64 Stat. 987, 997; 50 U. S. C. 781, 791). It consists of five members appointed by the President by and with the advice and consent of the Senate. No more than three members may be of the same political party. Pursuant to the provisions of subsection (a) of section 12 of the act, 2 of the original members were appointed for 1 year, 2 were appointed for 2 years, and 1 was appointed for 3 years; all successors are "appointed for terms of 3 years each", except where appointed to fill an unexpired term.

This bill would amend section 12 (a) so as to provide that upon the expiration of a Board member's term he "shall continue to serve until his successor shall have been appointed and shall have qualified."

Described generally, the primary function of the Subversive Activities Control Board is to determine whether organizations are "Communist-action" or "Communist-front" organizations within the meaning of the act, and whether individuals are members of Communist-action organizations registered, or by final order of the Board required to be registered, under the terms of the act. This important internal security function is performed by the Board through the medium of hearings conducted by one or more Board members or by an examiner designated by the Board. Following the conclusion of a hearing the hearing officer prepares a recommended decision which serves as the basis for action by the full Board.

This legislation anticipates situations in which the term of a Board member may expire just prior to the completion of his work as a hearing officer in one or more cases, making it impracticable and improvident to sever his official status on the exact date of the termination of his 3-year term. Rather, it should leave some leeway for continuing such person in office for a short additional period to permit him to complete his recommended decision on any matter which may be pending with him. Since some of the cases involve hearings extending over many months, and more than 5,000 pages of testimony, it becomes quite obvious how expensive it would be in terms of manpower and money to sever the official status of a Board member prior to the completion of his work on a matter which is in a terminal stage.

One other factor which should be considered with respect to this legislation is that it will guarantee a full Board at all times for action on the matters of grave importance to the internal security of the United States with which the Board is concerned.

Finally, it should be noted that there is considerable precedent for such legislation. Illustrative is the Interstate Commerce Act, pursuant to which the membership of the Interstate Commerce Commission is continued in office until successors are appointed and qualified.

Accordingly, the Department of Justice urges the prompt and favorable consideration of this legislation.

The Bureau of the Budget has advised that there is no objection to the submission of this report.

Sincerely,

WILLIAM P. ROGERS, *Deputy Attorney General.*

SUBVERSIVE ACITIVITIES CONTROL BOARD,
Washington 25, D. C., June 13, 1955.

Hon. HARLEY M. KILGORE,
Chairman, Committee on the Judiciary,
United States Senate, Washington 25, D. C.

DEAR SENATOR KILGORE: This will acknowledge receipt of your letter of June 10 requesting the views of this Board on S. 2171.

This bill is a technical amendment to put into our Subversive Activities Control Act the same provision that is present in organic acts of a number of other agencies, e. g., the Federal Trade Commission's Act (title 15, sec. 41, U. S. C. A.), providing that a member of the Board shall continue to serve beyond the expiration of his term until his successor has been appointed and qualified. Under the Subversive Activities Control Act in its present form, membership of a Board member automatically expires at the conclusion of his term unless prior thereto he is reappointed and qualified.

On March 4 of this year the term of one member expired, and although the nomination of his proposed successor was sent to the Senate on that date, it is still under consideration by your body, so that we are presently operating with 4 members, the terms of 2 of which expire August 9 next.

Under our current operating procedure, individual Board members preside over hearings at the conclusion of which recommended decisions are made to the entire Board. A substantial question of law could arise if the term of the Board member should expire prior to the filing of his recommended decision in a proceeding over which he presided. Such an eventuality would be avoided if S. 2171 were to become law.

For these reasons the Board strongly favors this bill, and we hope, in order to facilitate administrative continuity, it can be passed before adjournment of the present session. We have been given oral approval of this recommendation from the Bureau of the Budget.

Respectfully yours,

THOMAS J. HERBERT, *Chairman.*

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Calendar No. 615

84TH CONGRESS, 1st Session | SENATE | REPORT No. 610

OATHS AND ACKNOWLEDGMENTS

JUNE 21 (legislative day, JUNE 20), 1955.—Ordered to be printed

Mr. KILGORE, from the Committee on the Judiciary, submitted the following

REPORT

[To accompany H. R. 4221]

The Committee on the Judiciary, to which was referred the bill (H. R. 4221) to amend section 4004, title 18, United States Code, relating to administering oaths and taking acknowledgments by officials of Federal penal and correctional institutions, having considered the same, reports favorably thereon without amendment and recommends that the bill do pass.

PURPOSE

The purpose of the proposed legislation is to add to the class of persons presently authorized to administer oaths and take acknowledgments in Federal penal and correctional institutions a group of subordinate officers, in order to expedite such work in those institutions.

STATEMENT

The proposed legislation was introduced at the request of the Federal Bureau of Prisons. Present law authorizes only wardens and superintendents and associate wardens and superintendents to administer oaths and take acknowledgments of prisoners. A great deal of time is being spent by these officials in performing a service which could properly be done by staff personnel. In addition, as noted in the Attorney General's letter which is printed as part of this report, custodial officers, detailed to move the inmates in and out of the administrative offices of these senior officials, also spend, because of the lack of this needed amendment, a great deal of time which could be put to other use. The present bill will permit subordinate members of the staff, whose duties concern such work, to administer the necessary oaths and take acknowledgments.

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It should be noted that the present bill continues the prohibition against receiving any fee for the administering of such oaths or the taking of acknowledgments.

Attached hereto is a communication from the Director of the Bureau of Prisons to Hon. Harley M. Kilgore, chairman of the Senate Judiciary Committee, together with a report from the Department of Justice urging favorable consideration of this legislation.

UNITED STATES DEPARTMENT OF JUSTICE,
BUREAU OF PRISONS,
February 14, 1955

Hon. HARLEY M. KILGORE,
United States Senate Washington, D C.

MY DEAR SENATOR: I am enclosing draft of a bill together with a memorandum of explanation, which would authorize the Attorney General to designate additional officers and employees of our Federal penal and correctional institutions, as the need may be, who would have authority to administer oaths and take acknowledgments of officers, employees, and inmates without charge. If you feel that this proposed amendment has merit, I would appreciate it very much if you would sponsor it in the Senate

I have sent another draft of the bill and the explanatory memorandum to Congressman Celler for introduction in the House, if he feels that the proposed amendment has merit

While this proposed bill has not been made a part of the formal departmental legislative program, I am sure that the Department will be glad to support it.

Yours very truly,

JAMES V. BENNETT, *Director.*

MEMORANDUM RE PROPOSED AMENDMENT TO 18 UNITED STATES CODE 4004 RELATING TO ADMINISTERING OATHS AND TAKING ACKNOWLEDGMENTS BY OFFICIALS OF FEDERAL PENAL AND CORRECTIONAL INSTITUTIONS

The proposed amendment would give the Attorney General discretionary authority to designate officers or employees other than the officials specifically named as the needs of the service may indicate.

The experience of 16 years shows that the limitation of the existing statute imposes an undue burden of a purely routine nature upon the heads of the institutions and involves the movement of inmates in and out of the administrative offices which usually requires the assignment of custodial officers to supervise such movements. It is with the work of subordinate members of the staff, such as chief clerks, record clerks, advisory service employees and parole officers, and the records for which they are responsible, that most of the documents requiring oaths and acknowledgments are concerned. For these reasons it is felt there should be some flexibility in the statute leaving it to the Attorney General to determine whether or not a designation other than those specifically named should be made.

The proposed amendment would not only permit a more orderly handling of documents requiring oaths or acknowledgments, but would result in a considerable saving of money as represented by the time now spent in performing this necessary service by the heads of the institutions and the custodial officers detailed to supervise the movements of the inmates concerned.

MARCH 9, 1955.

Hon. EMANUEL CELLER,
Chairman, Committee on the Judiciary,
House of Representatives, Washington, D. C.

DEAR MR. CHAIRMAN: This is in response to your request for the views of the Department of Justice relative to the bill (H. R. 4221) to amend section 4004, title 18, United States Code, relating to administering oaths and taking acknowledgments by officials of Federal penal and correctional institutions.

The authority for administering oaths to and the taking of acknowledgments from officers, employees, and inmates of Federal penal and correctional institutions is vested specifically by statute in the heads of such institutions (18 U. S. C. 4004). Under this bill other officers and employees of penal and correctional institutions would be authorized to administer oaths and to take acknowledgments upon designation by the Attorney General.

The granting of authority to designate officers and employees of penal and correctional institutions, other than those specifically authorized by statute, to administer oaths and take acknowledgments would serve a number of worthwhile purposes. It would, in a number of instances, relieve the heads of penal institutions of an unnecessary burden. In many instances it would obviate the necessity for the movement of inmates in and out of administrative offices and would result in savings as represented by the time now spent in performing this service by the heads of institutions as well as by the custodial officers detailed to supervise the movements of the inmates. Also, since it is with the work of subordinate members of the staff, such as chief clerks, record clerks, parole officers, etc., and the records for which they are responsible, that most of the documents requiring oaths and acknowledgments are concerned, it would seem logical to authorize the designation of such subordinate officers to administer oaths and to take acknowledgments.

In view of the foregoing considerations the Department of Justice urges favorable action on the bill.

The Bureau of the Budget has advised that there is no objection to the submission of this report.

Sincerely,

WILLIAM P. ROGERS,
Deputy Attorney General.

CHANGES IN EXISTING LAW

In compliance with subsection (4) of rule XXIX of the Standing Rules of the Senate, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italics, existing law in which no change is proposed is shown in roman):

ACT OF JUNE 25, 1948 (62 STAT. 848; U. S. C. TITLE 18, SEC. 4004)

The wardens and superintendents, [and] associate wardens and superintendents, *chief clerks, record clerks, and parole officers,* of Federal penal or correctional institutions, may administer oaths to and take acknowledgments of officers, employees, and inmates of such institutions, but shall not demand or accept any fee or compensation therefor.

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Calendar No. 621

84TH CONGRESS, 1st Session } SENATE { REPORT No. 616

HELEN KELLER

JUNE 21 (legislative day, JUNE 20), 1955.—Ordered to be printed

Mr. KILGORE, from the Committee on the Judiciary, submitted the following

REPORT

[To accompany S. Con. Res. 39]

The Committee on the Judiciary, to which was referred the resolution (S. Con. Res. 39) recognizing, on the occasion of her 75th birthday June 27, 1955, the efforts of Miss Helen Keller in behalf of physically handicapped persons throughout the world, having considered the same, reports favorably thereon without amendment and recommends that the resolution be agreed to.

PURPOSE

The purpose of the proposed concurrent resolution is to recognize, on the occasion of her 75th birthday on June 27, 1955, the efforts of Miss Helen Keller in behalf of physically handicapped persons throughout the world, and to direct that appropriate greetings be forwarded by the Secretary of the Senate to Miss Helen Keller on her 75th birthday.

STATEMENT

On June 27, 1955, Miss Helen Keller will celebrate the 75th anniversary of her birth. Miss Keller was born in Tuscumbia, Ala. The little house in which she was born is still standing. On the anniversary of her birthday, the people of that area will hold appropriate ceremonies celebrating the 75th anniversary of the birth of this distinguished American woman.

The committee deems it appropriate to recognize that this remarkable woman, stricken deaf and blind in infancy, has for more than 50 years tirelessly devoted herself to the battle for the economic, cultural, and social advancement of the physically handicapped throughout the world, making her own conquests of disabilities a symbol of hope for millions.

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During the greater part of her lifetime, Miss Keller has worked long and faithfully in cooperation with the American Foundation for the Blind, and the American Foundation for Overseas Blind in devoting her untiring efforts to aid the cause of those who by circumstances are deprived of the loss of their sight. Miss Keller has traveled extensively not only in the United States but throughout the world, and by these travels she has inspired immeasurable progress in service to the blind, the deaf, and the deaf-blind, and has won countless new friends for the United States and the cause of democracy. The indomitable spirit displayed by this wonderful lady has proved an inspiration not only to others physically handicapped, but to all who have known her or heard of her accomplishments. The luster of her life is such that any honors conferred upon her would add little to her stature. Nevertheless, the committee desires to accord this further measure of recognition of a noble life, nobly lived.

The committee is in hearty accord with the spirit of this resolution, and deems it fitting tribute to Miss Keller to recommend that appropriate greetings be sent on the occasion of her 75th birthday. Accordingly, the committee recommends that Senate Concurrent Resolution 39 be favorably considered.

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Calendar No. 622

84TH CONGRESS, 1st Session | SENATE | REPORT No. 617

FEDERAL CONSTRUCTION CONTRACT ACT

JUNE 21 (legislative day, JUNE 20), 1955.—Ordered to be printed

Mr. KILGORE, from the Committee on the Judiciary, submitted the following

REPORT

[To accompany S. 1644]

The Committee on the Judiciary, to which was referred the bill (S. 1644) to prescribe policy and procedure in connection with construction contracts made by executive agencies, and for other purposes, having considered the same, reports favorably thereon, with amendments, and recommends that the bill, as amended, do pass.

AMENDMENTS

1. On page 2, line 3, strike the words "who will perform" and insert in lieu thereof the words "with whom the prime contractor will contract for the performance of".

2. On page 2, lines 4 and 5, strike the words "in the performance thereof".

3. On page 4, line 1, strike the word "approved" and insert in lieu thereof the word "permitted".

4. On page 6, line 3, strike the words "This Act shall not" and insert in lieu thereof the words "Neither this Act nor compliance with the provisions thereof shall".

5. On page 6, line 7, strike the words "and shall not" and insert in lieu thereof the word "or".

6. On page 6, beginning with line 11, strike all down to and including line 16, and insert in lieu thereof the following:

(b) Acceptance by an executive agency of a bid or statement of a prime contractor setting forth the name of a proposed contractor, or awarding a contract to such prime contractor after such acceptance, or permitting or denying the substitution of a contractor in accordance with the provisions of Sec. 2 (g), shall not be construed to be approval or acceptance by the executive agency of the United States Government of any contractor named or substituted, or to relieve the prime contractor of any responsibility for performance of the contract.

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PURPOSE OF THE AMENDMENTS

The amendments are merely of a perfecting and clarifying nature.

The first two amendments were added solely to make it clear that the administrative agencies are not required under section 2 (a) to break down mechanical specialty work into as many categories as might represent separate trades or types of business enterprise, but only to specify a number of major categories equivalent to the number of mechanical specialty subcontracts which a prime contractor would normally let directly on the particular type of project and in the particular geographic area involved. This change is also made to indicate that the prime contractor need list only the persons or firms with whom he has contracted directly or with whom he will contract directly for the performance of the major categories of mechanical specialty work specified by the agency rather than to list the persons or firms who will actually perform each category of such work.

The last four amendments were added solely as a matter of precaution to make it clear that acceptance by any executive agency of a bid with a mechanical specialty contractor named therein or permitting or denying the substitution of a mechanical specialty contractor as provided in section 2 (g), shall not be deemed approval by the Government of the mechanical speciality contractor named or substituted and shall not relieve the prime contractor of any responsibility for performance of the contract. When read with other language in the bill, these amendments make it abundantly clear that nothing contained therein shall create privity of contract between the United States Government and any subcontractor or give any subcontractor any cause of action against the United States on a Federal construction contract or in any degree diminish the responsibility of the prime contractor to the Government.

HISTORY OF THE LEGISLATION

In the 82d Congress S. 2907 was before the committee. Hearings were held on that legislation on April 29, May 20, May 21, and June 3, 1952. That bill was reported to the Senate on June 27, 1952.

During the 83d Congress, S. 848, a similar bill to S. 2907, was considered by the committee. Hearings were held on this bill jointly with a designated subcommittee of the Committee on the Judiciary of the House of Representatives on April 14, 1953. S. 848 was reported favorably by the committee to the Senate on June 18, 1953.

The present bill is a revised and simplified version of the above two bills.

PURPOSE

The purpose of the proposed legislation, as amended, is to prescribe policy and to improve existing procedure and practices in connection with the letting of lump-sum Federal construction contracts and to place the awarding of such contracts on a more efficient basis.

This is accomplished by establishing procedures for Federal agencies to follow in awarding construction contracts in line with the practices followed by prudent private owners. Prudent private owners require their prime contractors to submit the names of their mechanical specialty contractors, if any, as a part of the prime bid in order to

assure themselves that there is active competition for the mechanical subcontracts and that the price to them reflects the final low price for the mechanical specialty work which makes up a large part of the total cost.

The bill is also designed to eliminate the unfair trade practices of bid shopping and bid peddling in connection with Federal construction contracts. This will provide assurance to the mechanical specialty contractors that their bids will not be misused and, accordingly, give the Government the benefit of a full range of mechanical specialty bids and of greater competition in this field.

PROVISIONS OF THE BILL

The bill simply provides that the prime contractor on Federal lump-sum construction shall state in his bid the names of the mechanical specialty contractors, if any, that he intends to engage to accomplish the mechanical specialty work.

In the event of default of the mechanical specialty contractor named, the prime contractor may have the work done by a substitute or different mechanical specialty contractor. There are no restrictions, in such event, on whom he may engage as a substitute.

Regardless of default by the mechanical specialty contractor originally named, the prime contractor may engage a substitute or different mechanical specialty contractor providing the Government, in writing, permits such substitution.

Provisions of the bill are not applicable to contracts to be performed outside of the United States and those of $100,000 or less or in cases where the head of the contracting executive agency determines that public exigency warrants waiver.

The bill expressly provides that it shall create no cause of action by a mechanical specialty contractor against the Government; that acceptance by the Government of a bid with a mechanical specialty contractor named therein or permitting or denying the substitution of any mechanical specialty contractor, shall not be deemed approval of such mechanical specialty contractor named or substituted or relieve the prime contractor of any responsibility for performance of the contract; and that executive agencies are not thereby prevented from making any other conditions with respect to any subcontractors to be engaged by the prime contractor.

SECTION-BY-SECTION ANALYSIS

Section 1

Short title: Federal Construction Contract Act of 1955.

Section 2

(a) Executive agencies shall list in bidding or contract documents on each lump-sum construction contract each major category of mechanical specialty work involved therein.

(b) No executive agency shall award a lump-sum construction contract unless the prime contractor lists in his bid or proposal the names of the contractors whom he has or will engage to perform each major category of mechanical specialty work.

(c) Any prime contractor himself may perform any major category of mechanical specialty work under a lump-sum construction contract provided he states his intention to do so under (b) above.

UNIVERSITY OF MICHIGAN LIBRARIES

(d) Executive agencies are not prevented from awarding separate or several prime construction contracts for any one construction project.

(e) The prime contractor shall have each major category of mechanical specialty work performed by the contractors named by him except as provided in (f) and (g) below.

(f) In the event of default by the subcontractor named, a substitute subcontractor may be engaged by the prime contractor providing the prime first notifies the contracting executive agency in writing of the name of the substitute.

(g) Regardless of default by the contractor named, a substitute subcontractor may be engaged if the prime contractor first notifies the contracting executive agency in writing of the name of the proposed substitute subcontractor and that agency permits the substitution in writing. The executive agency may require the prime contractor to submit in writing information as to any change in cost to the prime involved in the change in contractors in accordance with this subparagraph (g).

(h) The act is not applicable to construction contracts:

(1) To be performed outside the United States.

(2) Of $100,000 or less.

(3) When agency head determines that public exigency requires waiver.

Section 3.—Definitions.

1. *Executive agency.*—Any executive department or independent establishment in the executive branch of the Government, including any wholly owned Government corporation.

2. *Construction contract.*—Any contract by any executive agency for the erection, repair, moving, remodeling, modification, or alteration of any structure upon real estate excluding aqueducts, reservoirs, dams, irrigation and regional water supply projects, jetties and breakwaters, or structures incidental thereto.

3. *Mechanical specialty work.*—Plumbing, heating, piping, air conditioning, refrigerating, ventilating, and electrical work, including but not being limited to the furnishing and installation of sewer, drainage, and water supply piping and plumbing, heating, piping, air conditioning, refrigerating, ventilating and electrical materials, equipment and fixtures.

4. *Prime contractor.*—Person having direct contractual relationship with an executive agency for the performance of a construction contract.

5. *Person.*—Individual, corporation, partnership, association, or other organized group of persons. References to contractor or prime contractor shall include those within the definition of "person".

6. *Lump-sum contract and lump-sum construction contract.*—Construction contract whether awarded after bid or negotiated, under which the price is fixed or to be fixed by any method other than the cost-plus-a-fixed-fee method.

Section 4

(a) No privity of contract created between the Government and any mechanical specialty contractor and hence no cause of action by any mechanical specialty contractor exists against the Government.

(b) Acceptance by any executive agency of a bid with a mechanical specialty contractor named therein or permitting or denying the substitution of such contractor under section 2 (g) shall not be deemed approval by the Government of such mechanical specialty contractor named or substituted or relieve the prime contractor of any responsibility for performance of the contract.

(c) Executive agencies are not prevented from making other requirements with respect to subcontractors to be engaged by the prime contractor or from requiring any information deemed advisable relative to the cost of performance of any construction contract.

STATEMENT

Hearings were held on this proposed legislation on May 12 and May 18, 1955, by a subcommittee of the Committee on the Judiciary.

Testimony in favor of the bill was received from United States Senator John J. Sparkman, of Alabama; contractors or representatives of the National Electrical Contractors Associations and the National Association of Plumbing Contractors. Statements endorsing the bill were also filed by a number of trade associations, contractors, architects, labor union officials, and other members of the contracting industry from various sections of the country, including the president of the International Brotherhood of Electrical Workers (AFL) and the president of the United Association of Journeymen Apprentices of the Plumbing and Pipe Fitting Industry of the United States and Canada (AFL).

Testimony in opposition to the proposed legislation was received from representatives of the Associated General Contractors of America, Inc., and a representative of the National Constructors Association. Objections to the bill were also raised at the hearing by witnesses of the Department of the Army, General Services Administration, and the Atomic Energy Commission.

Testimony adduced at the hearings before the subcommittee revealed that it is necessary to have a full range of mechanical subcontract bids and to have the low mechanical price reflected in the prime bid for the owner to secure construction at the right price. Upward of 40 percent of the total cost of Federal construction is in the cost of the so-called mechanical specialty work, plumbing, heating, piping and ventilating, electrical work and the like. The subcommittee was informed that this percentage is steadily increasing. The greatest variation in price is in the specialized work rather than in the structure itself. On modern, complex installations, this work is not performed or estimated by the prime contractor as is other subcontract work, but the prime bids are based on subcontract bids for mechanical specialty work.

In order for the owner to purchase construction at the right price he must establish a contracting procedure under which the prime bids reflect the low competitive price for this mechanical work. There are two elements to consider. First, there must be adequate active competition for the subcontract work. Secondly, the procedure must induce the finalization of the subcontract prices prior to the submission of the prime bids so that the low competitive price may be so reflected in the prime bids.

74002°—57 S. Rept., 84-1, vol. 2——65

UNIVERSITY OF MICHIGAN LIBRARIES

The Federal agencies now let prime construction contracts without requiring the prime contractor to submit the names of his mechanical subcontractors or requiring any competition for the mechanical subcontracts. No Government agency except the Corps of Engineers reserves the right to approve the subcontractors. It was stated during the hearings that an adequate number of mechanical specialty subbids are not being received on Government construction and that the Government is not receiving the advantage of the final price for the mechanical work.

The subcommittee was informed that mechanical specialty work is highly complex and technical. To accurately estimate such cost on a major Federal project is a very tedious and expensive process. Out-of-pocket expenses for preparing a mechanical bid on a Federal construction project very frequently will amount to several thousands of dollars. Under such circumstances, mechanical specialty contractors are unwilling to expend the substantial sums of money necessary when there is no reasonable expectation that they will be selected to perform the specialty work if their bid is the lowest responsible bid submitted. The reason advanced why these contractors have no assurance of performing the work if their bid is the lowest responsible one submitted to the prime contractor is because of the practice of bid shopping that is prevalent on Federal construction.

Bid shopping is the continuation of negotiations between the general contractor and the subcontractor after the former has been awarded the contract on the basis of a bid given him by the subcontractor in order to obtain a lower subcontract price than that used by the general contractor in making up the successful bid.

The method of negotiation of subcontract price prior to the award of the contract is a matter in which the Government has no direct interest as owner. The Government, however, has a direct interest in seeing that the negotiations are complete prior to the time of submitting the prime bid so it may get the benefit of the low responsible subcontract bids. Moreover, while bid-shopping prior to the award may be unethical, at that time prime bidders and the sub bidders are substantially on the same footing. After the award the situation is not equal and it is the possibility of bid shopping after the award that deters the mechanical subcontractor from bidding or from putting in his best price.

The subcommittee was advised that bid shopping seriously restricts the number of qualified mechanical specialty subcontractors who are willing to participate in Federal construction. Several witnesses testified that their companies do not customarily submit mechanical specialty bids on Government construction. Statements were submitted from reputable mechanical specialty contractors throughout the country alleging that they did not customarily bid as subcontractors. The reasons given for refraining from participating in Government construction as subcontractors were substantially the same; namely, the prevalent practice of bid shopping. The subcommittee was further advised that the same mechanical contractors who do not wish to bid as subcontractors are willing to bid as prime contractors to the Government where there will be no bid shopping. It was further stated that the Government receives a very large number of competitive bids for mechanical work when it takes bids direct.

In this connection a statistical study of the effect of bid shopping on competition, submitted for the record, substantiates this point. A questionnaire was sent to the 300 largest electrical contracting firms in the United States. These companies under normal conditions would customarily bid on the large Federal projects in their areas of operation. The replies indicated that less than 25 percent customarily submit sub-bids on Federal construction jobs. A large percentage never submit such sub-bids at all. Of the more than 75 percent that customarily do not submit sub-bids on Federal construction jobs, more than 93 percent gave the prevalence of bid shopping as their reason for not submitting bids on these projects

During the course of the hearings, the Department of the Army made inquiry of each field office of the Corps of Engineers as to whether they thought an adequate number of mechanical specialty sub-bids were being received. However, the expressions received are of little probative value because these contracting officers do not require subcontractor listing and hence have no way of knowing whether the prime bids were based on many or few mechanical specialty bids. At best, the opinion of the field officers that competition for sub-bids is only slightly affected by bid shopping, is based on little more than a guess. That the Department is not unconcerned with the problem, however, is illustrated by the fact that on July 28, 1953, Secretary of the Army Stevens expressed concern to the Small Business Committee of the House of Representatives because engineer prime contractors were not gaining access to a sufficiently wide circle of subcontractors.

Representatives of the Associated General Contractors, Inc. submitted telegrams for the record from their local chapter managers stating that they had not encountered any lack of mechanical specialty sub-bids. This, however, is at variance with the testimony of witnesses representing the Associated General Contractors at earlier hearings (in the 82d and 83d Congresses on S. 2907 and S. 848), many of whom elaborated on the fact that there were not enough mechanical sub-bids on Federal works.

Testimony at the hearings leads to the conclusion that the economic result of the refusal of large numbers of mechanical specialty contractors to bid under normal conditions on Government construction, tends to increase unnecessarily the cost of construction to the Government. The Government is not getting the right price if any substantial percentage of qualified mechanical specialty contractors are not normally willing to bid on Government work as subcontractors.

When it is considered that under present conditions the cost of the mechanical specialty work is a large part of the total construction costs, the significance of this situation becomes clear.

Present statutes require competitive bidding on the prime contract. This procedure enables the Government to obtain competitive prices on 60 percent of the cost of construction which is in the nonmechanical trades.

The committee is of the opinion that similar pricewise protection to the Government is needed insofar as the remaining 40 percent of the cost of construction is concerned, and such protection would be afforded under this proposed legislation.

Under present bidding procedures the price the Government gets is not only too high because of the thinness of competition but because it does not reflect the final price for the mechanical specialty work.

UNIVERSITY OF MICHIGAN LIBRARIES

As the Tax Court of the United States stated in the case of *Ring Construction Corporation* (8 T. C. 1070), present bidding procedures cause the subcontractor submitting a bid "To bid so high that he, the subcontractor, can still come down and get the job."

The committee is of the opinion that active competition for mechanical subcontracts on Federal work will not produce the right price to the Government unless the low subcontract prices are negotiated prior to the submission of the prime bid and fully reflected in such prime bid. As long as subcontractors will not submit their final price prior to the award of the prime contract because of bid shopping after the award, the Government cannot get the full benefit of the low competitive price.

The failure of the Government heretofore to adopt procedures under which it secures the benefit of active competition for mechanical specialty work and the advantage of the low competitive price for this work, is in marked contrast with the procedures adopted by private industry in this regard.

In order to obtain the benefit of the experience of some of the largest industries in the United States the subcommittee addressed a letter to the heads of 27 of the largest corporations in private industry, asking what procedures each follows in letting lump-sum construction contracts. The replies received by the subcommittee indicate that the procedure prescribed by the proposed legislation should result in lower construction costs to the Federal Government.

A majority of the companies contacted use either the subcontractor listing procedure as provided in the proposed legislation or make separate contracts or take separate bids for each other major category of mechanical specialty work, which are alternate methods of assuring the owner the full benefit of the low mechanical subcontract prices.

The remainder of the private companies use a system on its face similar to the present Government procedure, but all vary it to the extent of prequalifying or approving the mechanical subcontractors in such a way as to give the owner some of the advantages of S. 1644.

The committee deems it significant that major private industrial concerns such as Ford Motor Co., International Harvester Co., Socony Mobil Oil Co., Inc., General Electric Co., Dow Chemical Co., Sunshine Biscuits, Inc., Republic Aviation, Youngstown Sheet & Tube Co., the Budd Co., and Monsanto Chemical Co., in their own self-interest follow a subcontractor listing procedure similar to the system prescribed by the proposed legislation.

A substantially identical communication was addressed by the chairman to the heads of several of our States, municipalities and educational institutions. Here again the result was consistent with the replies received from the large industrial purchasers of construction.

The subcommittee received testimony to the effect that a number of States require separate contracts for mechanical specialty work and that others follow a subcontractor listing procedure substantially similar to that provided in the proposed legislation.

Such States as North Carolina, Arkansas, Wisconsin, Kansas, and Ohio, require mandatory separation of construction contracts into separate electrical, plumbing, heating, and general contracts. The State of Massachusetts awards one contract on the basis of separate direct bids. Statutes of the States of California and Idaho require prime contractors to list their mechanical specialty contractors in

their general bids. These statutes appear to be operating effectively to the economic benefit of each State and to the satisfaction of substantially all of the construction industry in each State.

The committee is of the opinion that the procedures prescribed by the proposed legislation will be equally as effective as separate contract bidding in procuring construction services economically and will be more elastic and retain for the Government all benefits of centralized control and responsibility of one prime contractor and will not involve the administrative difficulties inherent in separate contract bidding.

The committee believes that the proposed legislation will improve the contracting procedures of the Federal Government in letting lump-sum construction and hence to enable the Federal Government to obtain superior workmanship and better materials for each tax dollar expended and to obtain these benefits for less tax dollars.

Incidental benefits, of course, will accrue to the general contractors and to the mechanical specialty contractors and to their employees. No one conceivably can be injured by the legislation except possibly the unethical contractor, be he a general or a mechanical specialty contractor. Accordingly, the overall effect of the bill clearly is in the public interest.

The proposed legislation should eliminate altogether or at least materially ameliorate the chaotic condition resulting from last minute submission of sub-bids which exists under present procedure. When he knows there will be no shopping by himself or his competitors the prime contractor can secure for himself the benefit of having firm mechanical sub-bids a reasonable time in advance of his submission of the general bid. The Government, of course, will receive the benefit of active open competition for the mechanical subcontracts and the low competitive final price for such work as reflected in the prime bid.

Moreover, the proposed legislation will eliminate the present condition under which the ethical general contractor who refuses to indulge in bid-shopping is at a competitive disadvantage with his competitors who do engage in this practice.

Having firm mechanical specialty bids prior to award, the prime contractor will find it both unnecessary and without incentive to engage in bid-shopping after the award. It is unnecessary because he has a firm bid that represents the lowest responsible figure submitted. It is without incentive because the contracting executive agency will require the submission of information as to any change in cost involved in the proposed change in mechanical specialty contractors, and short of hardship should under proper administrative rules require the prime contractor to give the Government the benefit of any money savings resulting from the substitution of mechanical specialty contractors.

The committee concluded that it would be unwise to insert in the proposed bill any mandatory provision that the administrative agency require the prime contractor to account in full for any savings effected by the change. It was deemed preferable to leave the requirements which the agency might impose as a condition to receiving its permission to substitute a mechanical specialty contractor to administrative discretion or regulation because situations could be visualized wherein flexibility would be desirable.

Because of the unique position which the mechanical specialty contractor occupies in the construction industry, it is consonant with

UNIVERSITY OF MICHIGAN LIBRARIES

the public interest to require their listing by prime contractors in the prime bid. Both the high cost of estimating and the complexities involved therein make mechanical specialty bidding unattractive unless the bidder has assurance that his bid will not be misused and that he will get the job, following the award, if he is the lowest responsible bidder and his name has been listed in the prime bid. This condition does not appear to exist to the same significant degree outside the mechanical specialty contracting field because normally the general contractor does not find it necessary to procure sub-bids for work other than mechanical specialty work and in those relatively few instances in which such is done the cost of estimating is relatively minor. The bill (in sec. 4 (c)) permits the agencies to impose other requirements with respect to subcontractors or with respect to other subcontractors, if they wish.

Under the proposed bill the Federal Government is exercising the prerogative of an owner. It is prescribing policy and procedure in connection with the letting of its construction contracts. As the largest single purchaser of construction in the United States—several billions of dollars a year—the Federal Government not only has the right but it also has the duty to establish procedures that are expected to result in greater efficiency and economy. Moreover, the Government has an interest in fostering open competition by independent small businessmen and in preventing unfair trade practices on Federal works.

The committee does not believe that the bill will increase noticeably the administrative duties of the contracting executive agencies. Concededly, the only additional administrative responsibility that could arise would be in connection with the change or substitution of a mechanical specialty subcontractor other than instances of subcontractor default. This would involve little more than an additional bit of paper work. It is doubted that there will be many instances where a change in mechanical specialty contractor is requested because the proposed legislation eliminates the incentive for making a change. In those rare instances where a change is made, the substitution normally will result in a direct savings in the contract cost to the Government which should more than offset any increase in administrative costs.

The committee does not anticipate that alternate bids will present any particular problem. When the Government requests alternate proposals, the prime contractor need merely list the names of the mechanical specialty contractors that he proposes to use under each of the alternates submitted. This simply requires, at most, the adding of an additional name for each alternate proposal.

The desirability of requiring a mechanical specialty contractor named in a prime bid to post a bid bond was considered. However, the committee concluded that it was unnecessary to require by legislation a bid bond from the named mechanical specialty contractor inasmuch as this is a matter that can readily be determined by the prime contractor within his own discretion.

In view of the above reasons the committee is of the opinion that subcontractor listing such as is provided for in the proposed legislation is needed and is the most reasonable, practical and beneficial system for all concerned. The committee, therefore, recommends favorable consideration of S. 1644, as amended.

Attached hereto and made a part hereof are reports submitted on the instant legislation by the Atomic Energy Commission, General Services Administration, and the Department of the Army.

UNITED STATES ATOMIC ENERGY COMMISSION,
Washington 25, D. C., May 11, 1955.

Hon. H. M. KILGORE,
Chairman, Committee on the Judiciary,
United States Senate.

DEAR SENATOR KILGORE: This is in reply to your letter of April 20, 1955, requesting our comments on S. 1644, a bill to prescribe policy and procedure in connection with construction contracts made by executive agencies, and for other purposes.

The proposed bill would require each executive agency when requesting bids or proposals for construction work, with certain exceptions, to list each major category of mechanical specialty work which will be involved in performance of the work. Bidders or contractors offering proposals would be required to name each person who would perform mechanical specialty work so listed and would be permitted to have work performed by a substitute person only if a named person failed or refused to perform or complete his work or if the Government approved the substitution. The bill would not be applicable to cost-plus-a-fixed-fee construction contracts and would permit the head of the agency to exempt specific contracts from the provisions of the bill after making required determinations.

We are unable to determine whether enactment of this bill would result in any benefit to the Commission. However, provisions requiring the listing of each major category of mechanical specialty work in invitations for bids and requiring approval of proposed substitute subcontractors may increase the duties involved in the administration of construction contracts. If mechanical specialty subcontractors are entitled to the treatment specified by the bill, we believe it would be difficult to provide convincing reasons for resisting a broadening of the provisions to include other types of subcontractors. Extended application of these provisions would tend to increase administrative costs.

In addition, under section 2 (g) (2) the contracting agency would seem to be assuming some responsibility for performance by any substitute subcontractor it approved. This approval requirement is inconsistent with the principle that a lump-sum prime contractor alone is responsible for the work required by his contract. Furthermore, granting or withholding approval of a proposed substitute subcontractor might affect adversely the Government's position if problems arise on the work for which a substitute subcontractor was proposed. The provisions of section 4 do not appear to provide protection to the Government from the possible adverse legal effect of its action on a request for approval of a substitute subcontractor.

For these reasons we are unable to recommend enactment of S. 1644.

The Bureau of the Budget has advised us that it has no objection to the submission of these views.

Sincerely yours,

K. E. FIELDS,
General Manager.

GENERAL SERVICES ADMINISTRATION,
Washington, D. C.

Re S. 1644.

Hon. H. M. KILGORE,
Chairman, Committee on the Judiciary,
United States Senate, Washington 25, D. C.

DEAR SENATOR KILGORE: Your letter of April 6 transmitted S. 1644, a bill to prescribe policy and procedure in connection with construction contracts made by executive agencies, and for other purposes, and requested a report thereon.

In brief, the proposed bill requires executive agencies to list in bidding and contract documents each major category of mechanical specialty work involved. The general or prime contractor is required to name in his bid the subcontractors

UNIVERSITY OF MICHIGAN LIBRARIES

he will use on such work and no award can be made or lump-sum contracts entered into unless such names are specified.

Under section 2 (f) of the bill, if a named subcontractor fails or refuses to perform or complete, the prime contractor may substitute another subcontractor provided he first submits in writing the name of the substitute to the contracting agency.

The bill also provides under section 2 (g) for substitution for any reasons other than the foregoing provided the prime contractor submits the substituted name and, at the request of the contracting agency, any change in cost resulting from the substitution and the further requirement that the substitute subcontractor is approved in writing by the contracting agency.

The bill is similar to, although it does not contain all of the objectionable features that were present in S. 848 introduced in the 83d Congress.

We feel we cannot support passage of the bill for the reasons set forth below.

It is understood that the primary purpose of the bill is to eliminate so-called bid shopping after award of the prime contract. Most of our construction work in the last few years has been in Washington, D. C., and the area adjacent thereto. We have not encountered positive evidence of bid shopping in connection with our contracts. Accordingly, our experience does not indicate the need for legislation in this respect.

It is further understood that one of the arguments which has been advanced in favor of passage of the bill is that it would force prime contractors to do their bid shopping prior to award and the savings thus effected would accrue to the Government in the bidding. Under the present system of competitive bidding it is believed that bids do reflect such potential savings and thus there would be no monetary advantage to the Government in the enactment of the proposed legislation.

The bill would impose additional administrative responsibilities and burdens on the Government, which, while not anticipated to be serious in nature or magnitude, would result in extra effort and cost. We have reference to the necessity for listing the major categories of mechanical specialty work and the scope of each, checking the bids to ascertain if the subcontractors are named, and the administrative actions and responsibilities involved in the event of substitution.

Should a bidder be unable to obtain prices or for any other reason fail to name any or all of the required subcontractors, the bid would not be responsive to the invitation and therefore would have to be passed over under the provisions of section 2 (b) although, it may have been the low bid and very advantageous to the Government.

The bill would tend to discriminate against the prime contractor in that it would place restrictions on his freedom of operations while at the same time placing none on the operations of the subcontractors. It would not eliminate the practice of bid shopping as between subcontractors and their sub-subcontractors, materialmen, and suppliers.

The bill is further discriminatory in that it singles out the mechanical specialty trades. While we recognize that the bill makes it discretionary with the contracting agency to add other trades, this would increase the administrative burdens and responsibilities of the contracting agency and further restrict the freedom of operations of the prime contractor all to the extent of making such system of contracting unnecessarily cumbersome.

As suggested in your letter of May 9, Mr. Thomas B. Collins of the Senate Judiciary staff has been notified it is anticipated that Mr. Peter A. Strobel, Commissioner of Public Buildings Service, General Services Administration, will represent this Administration at the hearing on May 12.

The Bureau of the Budget has informally advised that there is no objection to the submission of this report to your committee.

Cordially yours,

DEPARTMENT OF THE ARMY,
Washington, D. C., May 11, 1955.

HON. HARLEY M. KILGORE,
Chairman, Committee on the Judiciary,
United States Senate.

DEAR MR. CHAIRMAN: Reference is made to your request to the Secretary of Defense for the views of the Department of Defense with respect to S. 1644, 84th Congress, a bill to prescribe policy and procedure in connection with construction contracts made by executive agencies, and for other purposes. The

Department of the Army has been delegated responsibility by the Secretary of Defense to express the views of the Department of Defense thereon.

The Department of the Army, on behalf of the Department of Defense, is opposed to the above-mentioned bill.

S. 1644, 84th Congress, is materially different from S. 848, 83d Congress, in many respects. However, the main purpose of S. 1644 like S. 848 is to eliminate an undesirable practice in the construction industry, generally referred to as bid shopping. This is a practice where, in some instances, general contractors look around for specialty subcontractors to do the work at a lower price than the proposal submitted by some other subcontractor and which may have been used by the prime contractor in preparing his bid. By letter of April 13, 1953, addressed to the former chairman of the Committee on the Judiciary, this office recommended that S. 848, 83d Congress not be given favorable consideration:

While certain objectionable features of S. 848 have been removed in S. 1644 other objections to the bill remain.

By requiring, in section 2 (g) of the bill, the approval of substitute subcontractors by the Government, it would appear that a legal question of the responsibility of the Government for the actions of the substituted subcontractor may be presented. It is our opinion that such difficulties would not be overcome by the provision in the bill which would disclaim the creation of any privity of contract between the Government and any subcontractor.

It is also believed that there should be no departure from the principle that the prime contractor shall remain solely responsible as to the selection of his subcontractors. The need for adherence to this principle has been borne out on projects where specialty phases of a construction job were separately let rather than all being placed by and under one general contractor. This departure from the normal procedure resulted in numerous claims for damages.

Policing by the Government to protect the bids or proposals of subcontractors doing mechanical specialty work would undoubtedly result in demands for similar action by other subcontractors participating in the performance of Government construction contracts. If any particular classes of subcontractors are entitled to the special treatment which the bill would allow, no sound reason appears for not according the same treatment to all classes of construction and supply subcontractors. In such event, the administration of construction contracts would become unduly burdensome.

In summary, it may be stated that the bid shopping of general contractors which the bill seeks to overcome is a matter to be cleaned up by the construction industry itself, if such a practice is regarded by the industry to be unethical. The Government has always taken the position that it should look only to the general contractor for performance. This places the responsibility for the performance of the work in one place and eliminates the necessity of dealing with many persons rather than with the one who is responsible for the entire work. The subcontract price, conditions of the subcontract, and any other agreements entered into by the general contractor and his subcontractors are, in our opinion, matters of concern only to those parties and should be of no concern to the Government so long as the provisions of the prime contract are being adhered to, there is no patent violation of law, and there is no evidence of collusion or fraud.

It is recommended that this measure not be enacted into law.

The fiscal effects of the bill cannot be estimated by the Department of Defense; however, enactment of the bill would increase the Government construction costs through increased administrative expenses.

This report has been coordinated within the Department of Defense in accordance with procedures prescribed by the Secretary of Defense.

Inasmuch as the committee has requested that the report be expedited, it is submitted without a determination by the Bureau of the Budget as to whether or not it conforms to the program of the President. As soon as such advice is received it will be forwarded to your committee.

Sincerely yours,

ROBERT T. STEVENS,
Secretary of the Army.

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Calendar No. 623

84TH CONGRESS, 1st Session | SENATE | REPORT No. 618

INCREASING CRIMINAL PENALTIES UNDER THE SHERMAN ANTITRUST ACT

JUNE 21 (legislative day, JUNE 20), 1955.—Ordered to be printed

Mr. KILGORE, from the Committee on the Judiciary, submitted the following

REPORT

[To accompany H. R. 3659]

The Committee on the Judiciary, to which was referred the bill (H. R. 3659) to increase criminal penalties under the Sherman Antitrust Act, having considered the same, reports favorably thereon without amendment and recommends that the bill do pass.

PURPOSE

The purpose of the proposed legislation is to increase from $5,000 to $50,000 the maximum criminal penalties which may be imposed for violations of sections 1, 2, and 3 of the Sherman Act (15 U. S. C. 1 ff.).

STATEMENT

As enacted in 1890, the Sherman Act provides criminal penalties not to exceed $5,000 or 1 year in prison, or both, for violations of section 1, 2, or 3 of that act. Section 1 of the Sherman Act prohibits all contracts, conspiracies, and combinations in restraint of trade; section 2 prohibits monopolization and attempts to monopolize, and section 3 applies to Territories and possessions of the United States.

Sections 1, 2, and 3 of the Sherman Act each also provides for punishment by imprisonment not exceeding 1 year for any violation of the provisions thereof, and that such imprisonment may be imposed independently of, or in addition to, a fine not exceeding $5,000. The bill here reported makes no change in the act with respect to the penalty of imprisonment. Accordingly, if the measure here proposed is enacted into law, the court would be authorized to impose punishment for any such violation by a fine not exceeding $50,000, or im-

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prisonment for not more than 1 year, or both, in the discretion of the court. Inasmuch as most cases of violations of the Sherman Act involve the acts of corporations rather than individuals, the punishment of imprisonment often cannot be invoked. Judges have likewise been reluctant to send individuals to jail for Sherman Act violations. In most instances, therefore, the only penalty which is imposed under the act is a fine of not more than $5,000. This, the committee feels, is grossly inadequate. The purpose of the present bill is to authorize the more flexible and effective punishment of a fine up to $50,000.

The Sherman Act is the basic antitrust statute. While a civil injunctive proceeding may result in a prohibition against continuation of illegal activity, and perhaps even in dissolution or divestiture, neither criminal nor civil proceedings can accomplish restitution. Even though a company may be convicted of flagrant wrongdoing under the antitrust laws, therefore, there is no procedure for divesting it of the profits resulting from the wrongdoing. The only redress available under a criminal proceeding is a fine of up to $5,000 on each count or a sentence of up to 1 year in prison, or both. A prison sentence in an antitrust case is highly unusual. Corporations of course cannot be imprisoned, and there seems to be little disposition on the part of courts to put a businessman in jail for keeping his plighted word not to compete with his friends.

The penalty provisions have remained unchanged in the 64 years of the act's existence, although as early as 1900 a House committee reported that the penalty provisions were deemed insufficient. A fine of $5,000 could not have been large even in 1890. Today, with the shrunken value of the dollar and the tremendous increase in corporate assets, such a fine is truly insignificant from a monetary point of view.

The committee does not mean to imply that because a $5,000 fine is insignificant monetarily it is therefore ineffective. But in the popular mind the amount of the penalty is likely to bear a relationship to the gravity of the offense, and so a small fine may indicate that the offense for which it was levied is not very serious, with the result that some businessmen may consider the possibility of violation a good business risk. Evidence of this attitude may be the frequency of pleas of nolo contendere in antitrust criminal cases, particularly since such a plea cannot be used as evidence in treble-damage actions.

The committee does not have figures showing the increase in corporate assets and profits from 1890 to 1954, but a study made a few years ago of 25 large corporations showed the increase in their assets and net profits from 1910 to 1948. In 1910 the assets of the 25 companies totaled $3,883 million; in 1948 $14,240 million. Net profits increased from $81 million in 1910 to $1,367 million after income taxes in 1948. Thus, the net profits after taxes were nearly 17 times larger in 1948 than they had been in 1910. The monetary impact of a $5,000 fine has decreased correspondingly. In fact, to preserve the intended effect of a $5,000 fine based on 1910 profits, it would have to be nearly $85,000 in relation to 1948 profits. According to a survey of the Department of Commerce, corporate profits after taxes have risen from $2.3 billion in 1935 to $18.6 billion in 1952 (Business Statistics (1953 Biennial Edition), Department of Commerce, Office of Business Economics).

In 1944, in a separate opinion in *United States* v. *South-Eastern Underwriters Association*, Justice Jackson expressed these views:

The antitrust law sanctions are little better than absurd when applied to huge corporations engaged in great enterprise. In the two related Madison Oil cases (see *United States* v. *Socony-Vacuum Oil Co.*, 310 U. S. 150) 15 of the 17 corporations convicted had combined capital and surplus reported to be $2,833,516,247. The total corporate fines on them were $255,000 making a ratio of fines to corporate capital and surplus of less than one-hundredth of 1 percent. In addition, fines of $180,000 were assessed against individuals. In the automobile financing case (see *United States* v *General Motors Corp.*, 121 F. 2d 376, cert. denied, 314 U. S. 618) General Motors Corp., three wholly owned subsidiaries, and no individuals were convicted. The fines were $20,000. Capital and surplus were then reported at $1,047,840,321, the fine being somewhat less than one five-hundredths of 1 percent thereof (322 U. S. 533, footnote 11 at 591).

The absurdity of such fines was further pointed out on March 1, 1949, by Judge Rifkind at the time of the imposition of the fines in *United States* v. *National Lead* (Cr. 114–455 (S. D. N. Y.)). At that time the court said:

I cannot even go through the formula of looking the defendant in the eye and saying, "Is there anything you wish to say before I pronounce sentence?" But I must confess that these amounts being substantially the maximum allowed by the statute there is very little I can do or very little reflection that I can give this matter except perhaps to make the inevitable comment that a violation of the antitrust laws which persisted from some time in the early 1920's to the 1940's, with respect to which the criminal liability is discharged by the payment of $5,000 a count hardly seems to me to be the nature of a penalty which is likely to discourage violations of the antitrust laws so far as the criminal laws are concerned, but that is a problem for the Congress.

It has been said that increasing the maximum fine to $50,000 would work a hardship on the small-business man who may violate the antitrust laws. The records of the Department of Justice show, however, that in a great many cases less than the maximum $5,000 fine is assessed, particularly against individuals. A study of fines levied in 116 antitrust criminal cases from 1946 to 1954 shows of 1,240 fines assessed, 945 amounted to less than $5,000. The committee believes, therefore, it is not a valid argument against increasing the maximum fine to say that an increase to $50,000 would be a hardship on small companies or on individuals. The bill under consideration would simply raise the ceiling on fines—it would not raise the floor. It may reasonably be assumed that in setting the fine courts will continue to exercise their discretion and take into account the means and circumstances of the defendant as well as the character of the offense, and in making recommendations to the court the Department of Justice will do likewise.

In contempt actions, of course, there is no limit on the amount of fines which may be assessed. For instance, in 1953 the Department of Justice simultaneously brought an indictment against several defendants and instituted contempt proceedings for their violation of an earlier decree outstanding against them. The companies were fined $4,200 under the indictment, and $100,000 under the contempt proceeding. Certain violations of Federal Trade Commission orders to cease and desist are subject to forfeitures of $5,000 for each day of the violation.

The committee is of the opinion that increasing the maximum amount of the fine to $50,000 would aid in making the penalty itself a deterrent and would lessen the likelihood that Sherman Act violations would be profitable. The committee, therefore, recommends favorable consideration of this bill, H. R. 3659, without amendment.

Attached hereto and made a part hereof is the communication from the Department of Justice urging the proposed legislation.

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COMMUNICATION FROM THE DEPARTMENT OF JUSTICE

JANUARY 21, 1955.

The SPEAKER,
House of Representatives, Washington, D. C.

DEAR MR. SPEAKER: There is attached for your consideration and appropriate action a legislative proposal to increase from $5,000 to $50.000 the maximum fine which may be imposed for violation of the Sherman Antitrust Act.

For a number of years there have been strong grounds for an increase in the present inadequate maximum fines which may be imposed for violation of the Sherman Antitrust Act. In the 64 years since the passage of that act the purchasing power of the dollar has decreased considerably while the assets and profits of corporations have increased many times over. To preserve the intended effect of the original maximum fine based on former-day corporation profits the penalty would have multiplied many times to maintain its relation to modern-day profits.

The only redress available in a criminal proceeding for violation of antitrust laws is a fine of up to $5,000 on each count or a sentence of up to 1 year in prison, or both. A prison sentence in an antitrust case is very unusual and, of course, corporations cannot be imprisoned. These penal provisions have remained unchanged in the 64 years since the original enactment of the law despite the fact that over 50 years ago a committee of the House of Representatives reported that the penalty provisions were then insufficient.

The measure presented herewith would simply raise the ceiling on fines. It would not require an increase of fines in all instances. It has been charged that increasing the maximum fine to $50,000 would work a hardship on the small-business man who may violate the antitrust laws. The records of the Department of Justice show, however, that the fines assessed against individuals is often less than the maximum. From 1946 to 1954 out of 1,240 fines assessed in antitrust criminal cases, 945 were for less than $5,000 each.

Under existing laws the deterrent effect of a $5,000 fine against a large corporation is almost negligible except for the stigma of conviction. Increasing the law's maximum penalty would certainly lessen the possibility that violations of the act would be profitable. It would also avoid the implication that violations of the antitrust laws are regarded as trivial in nature.

Legislation such as is recommended herein has passed the House of Representatives on several occasions. In the 83d Congress it passed the House of Representatives on May 5, 1953 in the form of H. R. 2237 and on July 9, 1954 it was favorably reported to the Senate Judiciary Committee by its Subcommittee on Antitrust, Monopoly, and Legislation. It is to be hoped that the bill may achieve final enactment early in this session of Congress.

The Bureau of the Budget has advised that there is no objection to the submission of this recommendation.

Sincerely,

HERBERT BROWNELL, JR.,
Attorney General.

CHANGES IN EXISTING LAW

In compliance with subsection (4) of rule XXIX of the Standing Rules of the Senate, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italics, existing law in which no change is proposed is shown in roman):

SHERMAN ACT (26 STAT. 209; 15 U. S. C. 1 FF. (1890), AS AMENDED)

SECTION 1. Every contract, combination in the form of trust or otherwise, or conspiracy, in restraint of trade or commerce among the several States, or with foreign nations, is hereby declared to be illegal: *Provided*, That nothing herein contained shall render illegal, contracts or agreements prescribing minimum prices for the resale of a commodity which bears, or the label or container of which bears, the trade-mark, brand, or name of the producer or distributor of such commodity and which is in free and open competition with commodities of the same general class produced or distributed by others, when contracts or agreements of that description are lawful as applied to intrastate transactions, under any statute,

law, or public policy now or hereafter in effect in any State, Territory, or the District of Columbia in which such resale is to be made, or to which the commodity is to be transported for such resale, and the making of such contracts or agreements shall not be an unfair method of competition under section 5, as amended and supplemented, of the act entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes", approved September 26, 1914: *Provided further*, That the preceding proviso shall not make lawful any contract or agreement, providing for the establishment or maintenance of minimum resale prices on any commodity herein involved, between manufacturers, or between producers, or between wholesalers, or between brokers, or between factors, or between retailers, or between persons, firms, or corporations in competition with each other. Every person who shall make any contract or engage in any combination or conspiracy hereby declared to be illegal shall be deemed guilty of a misdemeanor, and, on conviction thereof, shall be punished by [fine not exceeding $5,000] *fine not exceeding fifty thousand dollars*, or by imprisonment not exceeding one year, or by both said punishments, in the discretion of the court.

SEC. 2. Every person who shall monopolize, or attempt to monopolize, or combine or conspire with any other person or persons, to monopolize any part of the trade or commerce among the several States, or with foreign nations, shall be deemed guilty of a misdemeanor, and, on conviction thereof, shall be punished by [fine not exceeding five thousand dollars] *fine not exceeding fifty thousand dollars*, or by imprisonment not exceeding one year or by both said punishments, in the discretion of the court.

SEC. 3. Every contract, combination in form of trust or otherwise, or conspiracy, in restraint of trade or commerce in any Territory of the United States or of the District of Columbia, or in restraint of trade or commerce between any such Territory and another, or between any such Territory or Territories and any State or States or the District of Columbia, or with foreign nations, or between the District of Columbia and any State or States or foreign nations, is hereby declared illegal. Every person who shall make any such contract or engage in any such combination or conspiracy, shall be deemed guilty of a misdemeanor, and, on conviction thereof, shall be punished by [fine not exceeding five thousand dollars] *fine not exceeding fifty thousand dollars*, or by imprisonment not exceeding one year, or by both said punishments, in the discretion of the court.

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Calendar No. 624

84TH CONGRESS, 1st Session | SENATE | REPORT No. 619

AMENDING THE CLAYTON ACT BY GRANTING A RIGHT OF ACTION TO THE UNITED STATES TO RECOVER DAMAGES UNDER THE ANTITRUST LAWS AND ESTABLISHING A UNIFORM STATUTE OF LIMITATIONS

JUNE 21 (legislative day, JUNE 20), 1955.—Ordered to be printed

Mr. KILGORE, from the Committee on the Judiciary, submitted the following

REPORT

[To accompany H. R. 4954]

The Committee on the Judiciary, to which was referred the bill (H. R. 4954) to amend the Clayton Act by granting a right of action to the United States to recover damages under the antitrust laws, establishing a uniform statute of limitations, and for other purposes having considered the same, reports favorably thereon, without amendment and recommends that the bill do pass.

PURPOSE

The purpose of the proposed legislation is to amend the Clayton Act (38 Stat. 730) by (*a*) granting the United States the right to recover actual damages for injuries to its business or property by reason of violations of the antitrust laws, and (*b*), by establishing a uniform 4-year statute of limitations for antitrust damage suits brought by private parties or the United States.

ANALYSIS

Section 1 of the bill amends the Clayton Act by adding two new sections designated as section 4A and section 4B.

The proposed section 4A provides that whenever the United States is hereafter injured in its business or property by reason of antitrust law violations it may sue in the United States district court where the defendant resides, is found, or has an agent, and recover actual as distinguished from treble damages incurred thereby.

The new section 4B would provide that every cause of action by private parties under present section 4 and by the United States under

74002°—57 S. Rept., 84–1, vol. 2——66

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proposed section 4A shall be forever barred if not commenced within 4 years from the time the cause of action accrues. This section also provides that no cause of action barred under existing law on the effective date of the bill shall be revived by the proposed legislation.

Section 2 of the bill amends section 5 (a) of the Clayton Act to provide that final judgments or decrees rendered in civil or criminal proceedings (with the exception of Government damage suits under the new section 4A) instituted by the United States under the antitrust laws shall be prima facie evidence against defendants in damage suits by the United States under proposed section 4A as well as in private damage suits.

Section 2 of the bill would also amend section 5 (b) of the Clayton Act to provide that the running of the statute of limitations (contained in proposed section 4B) shall, as to private rights of action under the antitrust laws, be suspended during the pendency of any civil or criminal antitrust proceeding instituted by the United States (with the exception of proceedings under proposed section 4A) and for 1 year thereafter, provided that any such cause of action shall be barred unless commenced either within the period of suspension or within 4 years of the time that it accrued.

Section 3 of the bill would repeal section 7 of the Sherman Act which gives private persons the right to sue in the Federal courts for damages arising from violations of the Sherman Act. Section 7 is almost identical with section 4 of the Clayton Act, but relates only to violations of the Sherman Act. Both sections create private rights of action for damages. Since the Clayton Act's section 4 is more comprehensive, section 7 of the Sherman Act is considered to be no longer necessary.

Section 4 of the bill provides that the effective date of the proposed legislation shall take effect 6 months after its enactment. This will give plaintiffs, whose actions have accrued more than 4 years prior to enactment of this legislation, but who are not yet barred from suing under local statutes of limitation, half a year's grace within which to commence their suits.

STATEMENT

Proposals to permit the United States to sue for damages occasioned by antitrust violations have been directed to the Congress in past years. Section 1 of the Sherman Act as originally introduced in 1890 contemplated such an action by the United States in addition to other methods of enforcing the act. The original act was amended, and subsequently rewritten omitting reference to damage suits by the Government and providing specific criminal and civil remedies by way of forfeiture. The damage suit by private parties was retained as section 7 of the Sherman Act.

At the time of enactment of the Sherman Act, the major emphasis was upon methods of enforcement, and it was believed that the most effective method, in addition to the imposition of penalties by the United States, was to provide for private treble damage suits. It was originally hoped that this would encourage private litigants to bear a considerable amount of the burden and expense of enforcement and thus save the Government time and money.

The enactment of the Clayton Act in 1914 was in part a recognition by the Congress that section 7 of the Sherman Act had not successfully stimulated private litigation for enforcement of the Sherman Act Section 5 of the Clayton Act provided that final judgments and decrees in Federal antitrust proceedings would be acceptable as prima facie evidence against defendants in private damage suits. Section 4 of the Clayton Act simply restated the private right of action for damages contained in section 7 of the Sherman Act, but extended this right to cover all antitrust violations.

Since the enactment of the Clayton Act, the bulk of private antitrust litigation has followed successful Government action, so that the judgments and decrees in the Federal proceedings could be used to establish a case. Amassing evidence for antitrust cases would otherwise be a prohibitively expensive task for most plaintiffs.

This legislation would grant to the United States the right to sue for actual damages suffered by reason of any conspiracies, collusive agreements, or other practices proclaimed illegal under the antitrust laws. In *United States* v. *Cooper Corporation* (312 U. S. 600 (1941)) the Supreme Court construed section 7 of the Sherman Act to exclude the United States as a "person" who might sue for the recovery of treble damages. Thus, this legislation attempts to furnish the necessary statutory foundation which the Supreme Court in the Cooper case, supra, deemed essential to a recovery by the Government. In *United States* v. *Cooper. Corporation, supra*, the Court stated: "The Government must have statutory authorization before it can sue for treble damages under the Sherman Act." It should be noted, however, that the bill would grant to the Government the right to recover only actual, as distinguished from treble damages. This difference in treatment is a recognition of the difference in the position of the United States and of "persons" in this connection. Both may recover their actual damages. The damages of "persons" are trebled so that private persons will be encouraged to bring actions which, though brought to enforce a private claim, will nonetheless serve the public interest in the enforcement of the antitrust laws. The United States is, of course, charged by law with the enforcement of the antitrust laws and it would be wholly improper to write into the statute a provision whose chief purpose is to promote the institution of proceedings. The United States is, of course, amply equipped with the criminal and civil process with which to enforce the antitrust laws. The proposed legislation, quite properly, treats the United States solely as a buyer of goods and permits the recovery of the actual damages suffered.

The committee feels that this remedial amendment to the existing statutes is important even in normal times when the large volume of Government procurement may often subject the United States to unjustified exaction. But in a period of mobilization when the Government is greatly accelerating its rate of procurement and spending vast sums for defense, the committee believes the enactment of this legislation to be imperative.

The second important amendment proposed by the bill would add a new subsection to section 4 of the Clayton Act to provide a statute of limitations of 4 years for actions to recover damages brought either by the United States or by "persons."

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As previously indicated, the antitrust laws grant to private parties the right to bring a suit for treble damages to avenge injuries suffered through violations thereof. While this is a federally accorded right of action, at the present time private treble-damage cases are governed by State statutes of limitation.[1]

Under this ruling a number of anomalous situations may arise. A plaintiff located in State A who is injured by a conspiracy may find himself barred by the local statute of repose, whereas an injured party in State B, wronged by the very same collusive action, may still have a valid cause of action. While this may be unjust insofar as plaintiffs are concerned, defendants fare little better under the rule. Where conspiracies occur on a nationwide level and it is determined that the limitation law of the place of injury governs the case, a plaintiff injured in several jurisdictions is permitted to select as his forum the State with the most favorable statute. In such cases, the defendant remains in constant jeopardy until the longest period of limitations has transpired. Also adding to the confusion is the frequently present problem of a conflict of laws in determining which State statute is controlling, the law of the forum or that of the situs of the injury.

Even when the State whose statute of limitations is applicable has finally been ascertained, there remains still another hurdle to be overcome, namely the selection of the appropriate law of the State that governs private triple-damage proceedings. The problem is complicated in many instances by virtue of the fact that statutes of limitation must frequently be chosen from those pertaining to the ancient common-law forms of action such as trespass to persons and property, damage to property, and actions in the nature of actions on the case. In those instances where the State law has established a special statute of limitations for actions upon a liability created by statute, the selection of the proper limitation period may be immeasurably easier. Even here, however, confusion as to the correct limitation period abounds.

In *Northern Kentucky Tel. Co.* v. *Southern Bell T. & T. Co.*,[2] a private suit for triple damages filed in the State of Kentucky which had a 5-year statute of limitations applicable to "an action upon a liability created by statute * * *," the court held that the 1-year statute of limitations governing actions for conspiracy was to be preferred to the 5-year period for statutory liability. In *Reid* v. *Doubleday & Co.*,[3] the problem was whether the applicable period was contained in the statute of limitations pertaining to actions to enforce "a liability created by statute other than a forfeiture or penalty" or that prescribed for actions "upon a statute for a penalty of forfeiture." In this instance, it was held that the 6-year period governing proceedings of the former type rather than the 1-year period for actions of the latter was applicable.

It can therefore be seen that not only are the provisions of State law establishing time limitations upon actions to recover a statutory liability inconclusive insofar as ascertaining the correct period in which to bring suit is concerned, but they frequently create the

[1] *Chattanooga Foundry & Pipe Works* v. *Atlanta*, 203 U. S. 390 (1906).
[2] 73 F. 2d 333 (C. C. A. 6, 1934).
[3] 109 F. Supp. 354 (N. D. Ohio, 1952).

additional problem of determining whether the statutory liability imposed under the antitrust laws is in the nature of a penalty or forfeiture, or otherwise.

It is one of the primary purposes of this bill to put an end to the confusion and discrimination present under existing law where local statutes of limitations are made applicable to rights granted under our Federal laws. This will be accomplished by establishing a uniform statute of limitations applicable to all private treble damage actions as well as Government damage actions, of 4 years.

In establishing the appropriate length of time to be included in a Federal statute of limitations, the committee took notice of the prevailing periods of limitation contained in the laws of the various States. Information before the committee indicates that these State limitation periods range from a minimum of 1 year to a maximum of 20 years with a great number of State statutes varying between 1 and 4 years.

Based on recent court interpretations in various States, the committee is informed that some 26 States now have limitation periods of 4 years or less. The trend during the last decade throughout the States is toward a reduction in the length of the State period of limitation. The committee is further advised that a large percentage of private antitrust actions have arisen in States with a limitation period of 4 years or less. Alabama, Arizona, Kentucky, and Louisiana have 1-year periods of limitations. Illinois, Minnesota, and Texas have reduced the period to 2 years. States with 3-year periods of limitation include Arkansas, California, Connecticut, Delaware, Florida, Iowa, Idaho, Kansas, Maryland, Massachusetts, Michigan, Nevada, North Carolina, Oklahoma, and Washington. States with a 4-year period of limitation are Nebraska, New Mexico, Rhode Island, and Utah. States with 5-year periods are Missouri and Virginia. States with 6-year periods are Colorado, Indiana, Maine, Mississippi, New Hampshire, New Jersey, New York, North Dakota, Ohio, Oregon, Pennsylvania, South Carolina, South Dakota, Vermont, and Wisconsin.

Therefore, it appears that the average limitation for all the 48 States is around 4 years. The committee notes that a large number of the heavily industrialized States have limitation periods of 6 years, and it is to be assumed in these jurisdictions the principal number of actions might accrue. Considering all factors, the committee has concluded that a period of 4 years is a fair and equitable period of time to govern private treble damage actions brought under the antitrust laws. It should be noted, however, that under express provisions contained in the bill the new limitation period of 4 years would operate prospectively with respect to cases already barred by existing State statutes of limitations as of the effective date of the enactment of the bill. Thus the 4-year period would have no applicability whatsoever to cases in States with limitation periods less than 4 years where the existing limitation period had already expired upon the effective date of the proposed law.

This bill makes several important changes in the tolling provisions of existing law. As presently written, section 5 of the Clayton Act tolls the statute of limitations with respect to private treble-damage suits during the pendency of a suit by the United States to punish or

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restrain violations of the antitrust laws. This period of tolling is continued by the present bill with several modifications.

There are many instances where the statute of limitations as to a private cause of action may nearly have expired before suit is instituted by the Government under the antitrust laws. Although the statute is tolled during the pendency of the proceedings brought by the United States, the plaintiff in a treble-damage action may find, himself hard pressed to reap the benefits of the Government suit if, upon its conclusion, he has but a short time remaining to study the Government's case, estimate his own damages, assess the strength and validity of his suit, and prepare and file his complaint. To alleviate such difficulties, the present bill would extend the tolling period not only for the duration of the Government's antitrust suit, but for 1 year thereafter. This would guarantee all plaintiffs an adequate period in which to take advantage of Government antitrust proceedings.

While the committee believes it important to safeguard the rights of plaintiffs by tolling the statute during the pendency of Government antitrust actions, it recognizes that in many instances the long duration of such proceedings taken in conjunction with a lengthy statute of limitations may tend to prolong stale claims, unduly impair efficient business operations, and overburden the calendars of courts. The committee believes the provision of this bill will tend to shorten the period over which private treble-damage actions will extend by requiring that the plaintiff bring his suit within 4 years after it accrued or within 1 year after the Government's case has been concluded.

While the committee considers it highly desirable to toll the statute of limitations during a Government antitrust action and to grant plaintiff a reasonable time thereafter in which to bring suit, it does not believe that the undue prolongation of proceedings is conducive to effective and efficient enforcement of the antitrust laws. The present bill would assure all plaintiffs of at least 4 years from the time their cause of action accrued in which to institute suit. It would also guarantee every plaintiff at least a year from the close of a Government antitrust suit to prepare his case and file his complaint. But in cases where the plaintiff's action had been suspended by the pendency of a Government antitrust proceeding, he would be required to bring his action either (*a*) within the suspension period, i. e., within 1 year after the Government suit had terminated, or (*b*) within 4 years after his cause of action accrued.

The report of the Attorney General's National Committee to Study the Antitrust Laws, dated March 31, 1955, urges legislation permitting the Government the right to sue for actual damages and establishing a uniform 4 year Federal statutory limitation in antitrust actions.

The committee is of the opinion that this legislation is necessary and therefore recommends favorable consideration of this bill, H. R. 4954.

Attached hereto and made a part hereof is the report of the Attorney General submitted in connection with the proposed legislation.

DEPARTMENT OF JUSTICE,
Washington 25, D. C., June 16, 1955.

Hon. HARLEY M. KILGORE,
Chairman, Senate Judiciary Committee,
United States Senate, Washington, D. C.

DEAR SENATOR KILGORE: I understand your committee is now considering H. R. 4954. This bill passed the House. It would amend the Clayton Act by (*a*) granting the United States the right to recover actual damages stemming from antitrust violations as well as (*b*) by establishing a 4-year statute of limitations for antitrust damage suits brought by private parties or the United States.

United States v. *Cooper Corp.* (312 U. S. 600, 604 (1944) holds the United States is not a person entitled by Clayton Act section 4 to sue for damages stemming from antitrust violations. At the present time States and municipalities may maintain such actions in their own right, though not on behalf of private persons. We believe the same right to recover single damages should be extended to the United States.

Similarly, we favor enactment of a uniform statute of limitations. Currently, private antitrust action is needlessly complicated by issues such as which State's statute of limitations apply, the events from which such statute run, and the circumstances under which it may be told. Finally, varying periods of limitation encourage "forum-shopping" and seem ill-suited for enforcement of a uniform Federal policy.

On prior occasions this Department has urged a 6-year statute of limitations. Nonetheless, I now feel that the importance of securing a uniform statute outweighs possible differences over that statute's length. Accordingly, I now urge your approval of H. R 4954.

Permitting the United States to sue for actual damages as well as a 4-year Federal statute of limitations were both recommended by the recent report of the Attorney General's National Committee to Study the Antitrust Laws

Sincerely yours,

HERBERT BROWNELL,
Attorney General.

CHANGES IN EXISTING LAW

In compliance with subsection (4) of rule XXIX of the Standing Rules of the Senate, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italics, existing law in which no change is proposed is shown in roman):

THE ACT OF OCTOBER 15, 1914 (38 STAT. 730)

* * * * * * *

SEC. *4A. Whenever the United States is hereafter injured in its business or property by reason of anything forbidden in the antitrust laws it may sue therefor in the United States district court for the district in which the defendant resides or is found or has an agent, without respect to the amount in controversy, and shall recover actual damages by it sustained and the cost of suit.*

SEC. *4B. Any action to enforce any cause of action under sections 4 or 4A shall be forever barred unless commenced within four years after the cause of action accrued. No cause of action barred under existing law on the effective date of this Act shall be revived by this Act.*

SEC. 5. [That a] (*a*) *A* final judgment or decree *heretofore or* hereafter rendered in any [criminal prosecution or in any suit or proceeding in equity] *civil or criminal proceeding* brought by or on behalf of the United States under the antitrust laws to the effect that a defendant has violated said laws shall be prima facie evidence against such defendant in any [suit] *action* or proceeding brought by any other party against such defendant under said laws *or by the United States under section 4A*, as to all matters respecting which said judgment or decree would be an estoppel as between the parties thereto: *Provided*, [This] *That this* section shall not apply to consent judgments or decrees entered before any testimony has been taken *or to judgments or decrees entered in actions under section 4A*. [: *Provided further*, This section shall not apply to consent judgments or decrees rendered in criminal proceedings or suits in equity, now pending, in which the taking of testimony has been commenced but has not been concluded, provided such judgments or decrees are rendered before any further testimony is taken.]

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(*b*) Whenever any [suit or] *civil or criminal* proceeding [in equity or criminal prosecution] is instituted by the United States to prevent, restrain, or punish violations of any of the antitrust laws, *but not including an action under 4A*, the running of the statute of limitations in respect of [each and] every private right of action arising under said laws and based in whole or in part on any matter complained of in said [suit or] proceeding shall be suspended during the pendency thereof [.] *and for one year thereafter: Provided, however, That whenever the running of the statute of limitations in respect of a cuase of action arising under section 4 is suspended hereunder, any action to enforce such cause of action shall be forever barred unless commenced either within the period of suspension or within four years after the cause of action accrued.*

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THE ACT OF JULY 2, 1890 (26 STAT. 210)

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[SEC. 7. Any person who shall be injured in his business or property by any other person or corporation by reason of anything forbidden or declared to be unlawful by this act, may sue therefor in any circuit court of the United States in the district in which the defendant resides or is found, without respect to the amount in controversy, and shall recover three fold the damages by him sustained, and the costs of suit, including a reasonable attorney's fee.]

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Calendar No. 625

84TH CONGRESS, 1st Session | SENATE | REPORT No. 620

MAKING CERTAIN INCREASES IN THE ANNUITIES OF ANNUITANTS UNDER THE FOREIGN SERVICE RETIREMENT AND DISABILITY SYSTEM

JUNE 21 (legislative day, JUNE 20), 1955.—Ordered to be printed

Mr. SPARKMAN, from the Committee on Foreign Relations, submitted the following

REPORT

[To accompany S. 1287]

The Committee on Foreign Relations, having had under consideration the bill (S. 1287), to make certain increases in the annuities of annuitants under the Foreign Service retirement and disability system, report the bill favorably to the Senate and recommend that it do pass.

MAIN PURPOSE

The bill will increase the annuities of Foreign Service officers who retired prior to July 1, 1949. The increases will range from 25 percent for those retiring before July 1, 1945, to 5 percent for those retiring between July 1, 1948, and July 1, 1949. Provisions are made for commensurate increases in survivor benefits.

BACKGROUND

The Foreign Service Act of 1946 which became effective on November 13, 1946, in addition to reorganizing and strengthening the Foreign Service, provided for an upward revision of Foreign Service salaries. Annuities paid to participants in the Foreign Service retirement and disability system are based on the average yearly earnings for the 5 years immediately prior to retirement multiplied by the years of service up to 30 years. As a result of the salary increase in 1946 and the method of computation, a large discrepancy has developed between the annuities received by Foreign Service officers who retired prior to the effective date of the Foreign Service Act of 1946 and those who retired after 5 or more years service at the higher salaries. Officers retiring between November 13, 1946, and November 13, 1951, who served partly under the new scales and partly under the old

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were affected to an extent which diminished the closer to November 13, 1951, the retirement took place. Survivor benefits, whenever elected, suffered the same discrepancy.

Congress in 1952, by Public Law 348 (82d Cong.), alleviated the situation of Foreign Service annuitants somewhat by granting them a cost-of-living increase equal to that voted for civil-service annuitants, and retired Public Health and military personnel. This increase, which ranged up to 25 percent or $300, whichever was the lower, bridged the shrinkage in the purchasing power of the annuities resulting from the sharp rise in the cost of living during the early post-war years. The raise in the annuities resulting from Public Law 348, therefore, did not basically fill the gap between the pre-Foreign Service Act and post-Foreign Service Act annuitants.

A theoretical example illustrates this gap. A class 4 officer, after 30 years of service, the last 5 of them at the top of his grade, who retired in 1945 would be receiving an annuity of $4,080 a year today. His colleague, with identical terms of service, retiring in 1953, would be receiving $5,317.80 a year—that is, almost 25 percent more. Yet these officers (who are not actual cases) performed the same type of work for the same number of years. This bill will eliminate this unjustifiable difference.

WHAT THE BILL DOES

Inasmuch as the discrepancy in annuities diminishes in those cases in which retirement takes place late in the period from 1945 to 1950, the increase in annuities is based on a diminishing scale, which is as follows:

For period during which retirement took place:	*Percent increase*
Before July 1, 1945	25
Between July 1, 1945, and July 1, 1946	22.5
Between July 1, 1946, and July 1, 1947	17.5
Between July 1, 1947, and July 1, 1948	11.25
Between July 1, 1948, and July 1, 1949	5

This scale takes into account service under the higher salaries set by the Foreign Service Act of 1946 (sec. 1).

The increases will be computed on the basis of the annuity of an annuitant before the effective date (July 1, 1952) of Public Law 348, which raised annuities as discussed above (sec. 2 (a)).

In cases where a retired officer elected to receive a reduced annuity in order to provide survivor benefits for his wife and for restoration of his full annuity in case his wife predeceased him, his full annuity will be increased in accordance with the principles of the scale above (sec. 2 (b)). The increase in the annuity of a widow of a Foreign Service officer will be based on the amount which the officer would receive under this bill if he were still living and will bear the same ratio as the officer's annuity would have borne to the increase (sec. 3). Widows of Foreign Service officers who died before July 1, 1949, and who become annuitants subsequent to the effective date of this bill, will be entitled to the increased annuity on the same basis as other widows (sec. 4).

Lastly, the bill provides that no officer shall receive an increase who is presently receiving the maximum annuity payable under section 821 (a) or (b) of the Foreign Service Act of 1946 (sec. 5) and

that no annuity presently paid shall be reduced as the result of the provisions of the bill (sec. 6).

THE COSTS INVOLVED

There are approximately 450 annuitants at present under the Foreign Service retirement and disability system. This bill will affect only 256 of these. The cost of the increase is estimated at $117,660 for the first year. The 20-year cost of the increase, based on the life expectancy of this group, will be about $1,440,000.

EXECUTIVE BRANCH COMMENTS

The State Department has endorsed the bill in the following letter from Assistant Secretary of State Thruston B. Morton to the chairman of the Foreign Relations Committee:

MARCH 25, 1955.

Hon. WALTER F. GEORGE,
Chairman, Committee on Foreign Relations,
United States Senate.

DEAR SENATOR GEORGE: Further reference is made to your letter of March 3, 1955, requesting a report on S. 1287, to make certain increases in the annuities of annuitants under the Foreign Service retirement and disability systems.

As we understand it, this bill will provide increases in the annuities of annuitants under the Foreign Service Retirement and disability system which will range from 25 percent for those whose retirement took place before July 1, 1945, to 5 percent for those whose retirement took place on or after July 1, 1948, but before July 1, 1949.

The proposed increases will somewhat offset the serious effect that the rising cost of living has had upon the annuities of participants in the Foreign Service retirement and disability system who retired before they received the benefits of certain pay increase legislation which applied to Federal employees.

The bill further provides for an increase in the annuities of widows of Foreign Service officers who died in active service on the same basis as for widows whose spouses died subsequent to their retirement. It provides for increasing the full annuity of an officer who, at time of retirement, elected to receive a reduced annuity in order to confer survivorship benefits on his spouse and who elected to have his annuity further reduced in order to provide for restoration of his full annuity in the event of his wife's prior death. The bill also provides for passing on to the surviving widow (not herself presently an annuitant) of an officer, who died prior to July 1, 1949, the benefits of an increase in her annuity on the same basis as for widows who are annuitants.

The Department of State supports the view that S. 1287 should be enacted. Inasmuch as the committee has requested that our report be expedited, it is submitted without a determination by the Bureau of the Budget as to whether or not the proposal is in accordance with the program of the President. As soon as such advice is received, it will be forwarded to your committee.

Sincerely yours,

THRUSTON B. MORTON,
Assistant Secretary
(For the Secretary of State).

The Bureau of the Budget has written in opposition to some aspects of the bill. The committee weighed these objections but decided nevertheless that the increases were warranted.

COMMITTEE RECOMMENDATIONS

S. 1287 by Senator Sparkman has been pending before the committee since March 2, 1955. On June 9 the committee considered the bill and ordered it reported favorably to the Senate. The committee

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wishes to stress that these increases are not cost-of-living increases such as were granted by Congress in 1952. The present increases are in the nature of "equalization" increases. They will equalize the amount of annuities received by officers who retired before the postwar pay raises and the amount received by those who retired after service at the higher salaries. It has already been pointed out that the work and years of service of both groups are comparable. Moreover, the present cost of living affects both groups equally. It is only fair, therefore, that their annuities should reflect their equal status and expenses. The committee urges the Senate to give prompt and favorable consideration to the bill.

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Calendar No. 626

84TH CONGRESS, 1st Session | SENATE | REPORT No. 621

FAVORING DISCUSSION AT THE COMING GENEVA CONFERENCE OF THE STATUS OF NATIONS UNDER COMMUNIST CONTROL

JUNE 21 (legislative day, JUNE 20), 1955.—Ordered to be printed

Mr. GREEN, from the Committee on Foreign Relations, submitted the following

ADVERSE REPORT

[To accompany S. Res. 116]

The Committee on Foreign Relations, having had under consideration a resolution (S. Res. 116) expressing the sense of the Senate that the present and future status of the nations of Eastern Europe and Asia now under Communist control shall be a subject for discussion at any conference between the heads of state of the Soviet Union, the United Kingdom, France, and the United States, report the resolution adversely to the Senate by a vote of 14 to 0 and recommend that it not be agreed to.

GENERAL PURPOSE

This resolution, if adopted against the recommendation of the Committee on Foreign Relations, would express the sense of the Senate that prior to any conference between heads of state, the Secretary of State should secure the agreement of other parties at the conference—the Soviet Union, the United Kingdom, and France—that one of the subjects for discussion should be the present and future status of the nations of Eastern Europe and Asia now under Communist control.

The Committee on Foreign Relations recommends against adoption of the resolution because, among other reasons, it would unduly restrict the freedom of the President of the United States in the conduct of international negotiations of vital interest to the security of this Nation, and it would have the effect of expressing a lack of confidence in the President at a critical juncture in world history when American unity in foreign affairs is particularly important.

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TEXT OF RESOLUTION

The text of the resolution is as follows:

[S. Res. 116, 84th Cong., 1st sess.]

RESOLUTION

Whereas under the Constitution of the United States, the Congress and more particularly the Senate, has concurrent responsibility with the executive branch for the formulation of the international policies of the United States; and

Whereas the safety, peace, and independence of the United States are seriously threatened by the aggressive world Communist movement under the leadership of the Soviet Union; and

Whereas the United States is pledged to seek the freedom of the millions of people who have already been enslaved by the world Communist movement; and

Whereas the safety, peace, and independence of the United States can never be permanently secured, nor the goal of the United States to obtain the freedom of oppressed peoples realized, so long as certain areas of the world remain under Communist control; namely, Estonia, Latvia, Lithuania, Poland, Czechoslovakia, Hungary, Bulgaria, Rumania, Albania, Eastern Germany, Northern Korea, Northern Indochina, China, and the Soviet Union; and

Whereas the President has determined to confer with the heads of state of the Soviet Union, the United Kingdom and France at Geneva, Switzerland, on July 18, 1955, with the objective of relieving world tensions and thus of attempting to make more secure the safety, peace, and independence of the United States; and

Whereas the government of the Soviet Union announced on June 13, 1955, and on several occasions prior thereto, that the subject of areas under Communist control would not be discussed by the Soviet Union at said conference between the heads of state; and

Whereas failure to discuss said areas under Communist control at said Geneva meeting implies de jure recognition of Communist domination of said areas, and thus the establishment of a permanent threat to the safety, peace, and independence of the United States; and

Whereas the Secretary of State is meeting with the Foreign Ministers of the Soviet Union, the United Kingdom, and France beginning June 20, 1955, at San Francisco, reportedly to discuss, inter alia, an agenda for the conference between the heads of state: Now, therefore, be it

Resolved, That it is the sense of the Senate that at said Foreign Ministers' meeting at San Francisco or at such other meeting or occasion as may be appropriate, prior to any such conference between the heads of state, the Secretary of State should secure the agreement of the Soviet Union, the United Kingdom, and France that the present and future status of the nations of Eastern Europe and Asia now under Communist control shall be a subject for discussion at such conference between the heads of state.

COMMITTEE ACTION

Senate Resolution 116 was introduced by Senator McCarthy on June 20, 1955. At the request of the majority and minority leaders of the Senate, the committee undertook to consider the resolution without delay. Accordingly, on June 21, 1955, the committee held a public hearing on the resolution at which Senator McCarthy urged its favorable consideration and Hon. Herbert Hoover, Jr., Acting Secretary of State, expressed the administration's opposition. The prepared statement of Acting Secretary of State Hoover is appended to the report for the information of the Senate. The committee subsequently met in executive session and the resolution was discussed at length.

It was moved that the resolution be reported to the Senate and that the Committee on Foreign Relations recommend that it not be agreed to. A substitute motion was offered to table Senate Resolution 116 in the committee. The motion to table was defeated by a vote of

8 to 7. Thereupon the committee voted to report the resolution to the Senate and recommend that it not be agreed to.

REASONS FOR COMMITTEE RECOMMENDATION

During committee consideration of the pending resolution, the following principal reasons were offered against its adoption:

1. Approval of the resolution would imply a lack of confidence on the part of Members of the Senate in the ability of the President of the United States to carry out his constitutional role in the conduct of foreign policy and to represent our country effectively in the forthcoming top-level conference. Moreover, such an action taken now, on the eve of the conference, would raise grave doubts in the minds of the people of other countries as to the singleness of purpose with which this Nation pursues its objective of world peace.

2. The resolution would seem to based on the assumption that the President and the Secretary of State are less mindful of the interests of the unfortunate people behind the Iron Curtain than is the Senate. The committee did not believe it was necessary for the Senate to remind the President and the Secretary of State of the deep concern which Americans have felt for more than a decade at the enslavement of people in Communist-dominated lands.

3. The committee believed it would be unwise to require agreement with the Soviet Union upon a specific agenda item as a condition precedent to United States participation in the forthcoming Big Four conference. Assurances were received from the Acting Secretary of State, Herbert Hoover, Jr., in his testimony before the committee, to the effect that—

> in the preliminary conversations that have already taken place regarding arrangements for the conference, it has been agreed that each of the participants would be free to take up any subject which it believed to be a contributory cause of world tensions.

Members of the committee agreed, therefore, that the pending resolution would be meaningless if not actually harmful. Its adoption would tend to give priority to discussion of one subject and by implication subordinate the discussion of other highly important matters such as disarmament and the future of Germany.

4. Under these circumstances, it was pointed out that in all probability the status of the people behind the Iron Curtain is a problem which will be considered at the forthcoming conference. It would be quite another matter, however, for the United States to insist in advance that this question should be the subject of discussion in any formal sense. In fact, there is a possibility that insistence on inclusion of this specific item might result in cancellation of the conference even before it becomes possible to explore Soviet intentions with respect to world peace.

5. Past experience in negotiating with the Soviet Union has indicated that considerable difficulty often arises in connection with determining items to be placed on the agenda. The committee believed there is a very real danger that the Soviet Union might seek some method of delaying or avoiding the meeting of the scheduled conference and blaming the United States for the breakdown of negotiations even prior to the agenda-fixing stage. Adoption of this resolution might provide such an excuse.

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6. The committee believed it would be a serious mistake to require the President to attend a conference with his flexibility of negotiation restricted by the provisions of the pending resolution. The committee knows that the representative of the Soviet Union will not operate under a similar restriction and does not want the President of the United States to be unduly handicapped in these discussions.

7. Approval of this resolution could have the effect, in the event the conditions set forth are not agreed to by the Soviet Union, of preventing the United States from participating in the forthcoming conference. Furthermore, if the conference were canceled for this reason, world public opinion might be inclined to blame the United States for blocking progress in the direction of world peace.

8. While passage of this resolution might endanger the holding of the conference, failure to approve the resolution does not in any way foreclose the freedom of the President to raise such matters as he may find appropriate at the conference.

COMMITTEE CONCLUSIONS

The committee desires to have it clearly understood that its action in recommending against adoption of the pending resolution should not be construed as arising from any lack of interest in the welfare of the people of the nations now under Communist control. Indeed, the committee has on numerous occasions in past years approved resolutions enabling the Senate to go on record in support of the aspirations of these peoples for freedom and independence.

The committee hopes it will be possible for the representatives of the United States to bring the status of the people in the Soviet-dominated countries to the attention of the Conference. It is convinced that their status is one which is of the utmost concern to the President of the United States and to the Secretary of State as it is to the Members of the Senate. It may well be one of the subjects which would undoubtedly lead to a reduction of international tensions in the event of successful negotiations.

It is the purpose of the forthcoming Big Four meeting to delineate the areas of tension in the world. It cannot be expected that the conference will itself lead to immediate settlement of the vast range of areas of disagreement between the free world and the Communist world. Indeed, it may be years before some of the matters discussed at that meeting will be finally settled. Nevertheless, a start must be made. In the opinion of the committee it would be a tragic mistake if precipitate action taken by the Senate now were to endanger in any way the possible success of this effort which may lead to a new era in international relations.

Any attempt by the Senate at this time to set forth specific matters to be discussed at the conference would unduly hamper and restrict the President in his negotiations. He must be as free as the other representatives at the conference to raise any questions which may possibly be productive of a peaceful future in which the area of freedom in the world may be expanded.

The Committee on Foreign Relations takes this occasion to express its complete confidence in the President of the United States and in the Secretary of State. It has no doubt of their capacity and their ability to express effectively the views of the American people and to

negotiate successfully with the representatives of the other powers which will meet in Geneva on next July 18.

For the reasons outlined above, the committee believes it would be in the national interest for the Senate to reject the pending resolution.

APPENDIX

STATEMENT OF ACTING SECRETARY OF STATE, HERBERT HOOVER, JR., BEFORE THE SENATE FOREIGN RELATIONS COMMITTEE CONCERNING SENATE RESOLUTION 116, JUNE 21, 1955

I refer to the request of the Foreign Relations Committee for the comments of the Department of State on Senate Resolution 116, which expresses the sense of the Senate that prior to any conference between the heads of government of the United States, the United Kingdom, France, and the Soviet Union, the Secretary of State secure the agreement of the representatives of the other three nations that the present and future status of the nations of Eastern Europe and Asia now under Communist control shall be a subject for discussion at such a conference between the heads of government.

The position of the United States on this subject is well known. The Congress, the President, and the Secretary of State have many times clearly and forcefully expressed the hope that all people, everywhere, may exercise their inalienable rights to a government of their own choice and a life in which the dignity of man is paramount.

In his television report to the President after his return from Vienna, the Secretary of State had this to say about the pending conference: "It may at least set up new processes for a solution of some of these great problems—problems like the unification of Germany, the problem of levels of armament, the problem of atomic weapons, the problem of the satellite countries, the problems created by international communism."

In the preliminary conversations that have already taken place regarding arrangements for the conference, it has been agreed that each of the participants would be free to take up any subject which it believed to be a contributory cause of world tensions The purpose of such an agreement was to eliminate possible arguments on the fixing of a rigid agenda. It will be remembered that, at the Palais Rose Conference in 1951, 4 months of intense discussion failed to achieve agreement upon an agenda. There have been numerous repetitions of this same situation upon other occasions. The proposed resolution calls for a prior agreement on the subjects for discussion, as a prerequisite for the holding of the conference. Under the circumstances, I do not believe that a procedure such as suggested in this resolution would be advisable.

I feel certain that the President and the Secretary of State are in complete sympathy with the ultimate humanitarian objectives of Senate Resolution 116. I believe, however, that it is desirable and necessary to rely on the judgment and ability of the President and the Secretary of State to carry on this conference pursuant to their responsibilities. To adopt this or similar resolutions could suggest, and might be misinterpreted as, establishing preconditions to these important and delicate discussions.

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